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IVRA POPVLI ANGLICANI:  
OR, THE SVBIECT'S RIGHT OF  
PETITIONING SET FORTH.  
OCCASIONED BY THE  
CASE OF THE  
KENTISH PE-  
TITIONERS.

WITH SOME THOVGHTS ON THE REASONS  
WHICH INDVCED THOSE GENTLEMEN  
TO PETITIC AND OF THE  
COMMONS RIGHT OF  
PETITIONING.

*Nulla veritas ullâ de re ita difertè cavere potest,  
Ut malitiosa calliditas locum fraudi non inveniât.*

ULPIAN, of the Laws of his Time.

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Alfred 1772, 501

## P R E F A C E.

It is a melancholy reflection to consider how universal a dissatisfaction the management of the House of Commons has this session caused in the people of England. Among the many who arraign their proceedings, there are none who make not the treatment of the five gentlemen who presented the Kentish petition, one article of impeachment against them: and the most intelligent part of the people have been free in saying, that the punishment of them plainly demonstrates very extraordinary designs, and must be allowed, even by men of candour and sense, to give just grounds for all the jealousies and suspicions that have been entertained.

It is not my design in handling this subject, to use any artifices or false colours, to foment such jealousies as these, but to discharge a duty which I owe the community, and to prevent an intolerable sort of slavery, which may be brought in upon us, if care be not taken to fence against such acts of power, and infringements of our liberty, by shewing the injustice and illegality of them.

Though the task be very grateful, and what I could not but undertake, when I con-

sidered how necessary it was to run down that power, which has been assumed to destroy the freedom we are entitled to by the law of nature, and municipal laws of this land ; yet two considerations there are which did not a little discourage me in the undertaking.

First, it was no small check to me to consider how invidious a thing it is to censure the proceedings of that great and honourable assembly the House of Commons. The people of England generally call them their representatives, and so far do they think themselves interested in what they do, as to espouse their acts for their own, and reckon any censure of them to be an arraignment of the whole people. He therefore that will be so hardy as to attack such an authority as this, may well be under some concern at the undertaking, and had need, in the very entrance, to remove a prejudice which is enough to defeat his sincere endeavours to serve the publick. The apology which I shall here make for myself, is to desire those who are so tender of the honour of their representatives, to consider,

First, That he who uses a freedom in speaking against the proceedings of the House of Commons, is not necessarily to be supposed to speak against the whole house, much less the whole people of England. It is true indeed, when a question is carried, tho' it be  
only



only by one voice, it is as much the act of the whole body, as to any force and operation in our constitution, as if it had the suffrages of every individual person. Will any one say that such a resolution, in the debates of men without doors, concerning its being reasonable or unreasonable, is as much to be reckoned the act of the whole body, as if it had the cheerful suffrages of them all? To speak a little more plainly, let us consider a question at the very time of division, with the voices equal on both sides. In this case, men reasoning and speaking their minds freely concerning either side of the question, cannot be said to be guilty of any offence, or utter any reflection against the people of England, or their representatives, because they whose suffrages he condemns are no more than the other side, whose proceedings he justifies. Afterwards, when such an equal division as this is decided by the speaker, it must be owned that his voice makes it the act of the House: but what in reality does such a person do; does he any more than censure that one member of the house? Or can his reflections reach any more of the people of England, than those who chose him for their representative? If in such a case the speaker should happen to be a man of crooked designs, notorious for falseness and unsincerity, as well as other immoralities, and engaged in all the interests of a party, suspected and feared by far the greater part of the people ;  
would

would it be possible for human nature to have that reverence which some contend for, for such an ordinance as this? Or ought he in justice or good sense to be censured as an evil man, and one who boldly reviles the people of England, who uses some freedom in speaking against the resolution, which owed its sanction to such a corrupt voice? This shews us what opinion we are to have of those who are free in censuring such resolutions when they are carried by greater majorities. If a matter should happen to be pushed on by the violence of a faction, wherein the ringleaders are men whom the people have a long time thought enemies to the government under which they live; if the very fact it self carry in it very broad signs of evil intentions; if it be contrary to the natural rights of the people, and laws of the land, it is not the majority of the house will be able to reconcile men to it: and if upon the account of its oppressiveness and illegality, the voice of the people be every where against it, it will be a solecism to say, that he who in defence of the peoples rights, uses a freedom in speaking against it, arraigns the justice of the whole people of England, and wounds their honour through the sides of their representatives.

It is not to be wondered that the imprisoning of the Kentish Petitioners should have the voices of the major part of the House of Commons,

mons, when (besides the great inclination discovered by the Spe——er) Sir Ed——rd Sey——r, Sir Bar——w Sh——r, Mr J——n H——w, Mr. Ham——d, Mr. Har——rt, and others pressed violently for it. What so many leaders in the party contended earnestly for, could not but have the approbation of those who voted as constantly with them, as if they thought it both their duty and interest so to do.

But tho' that was the act of the greater part, it was not of the whole House of Commons. All those worthy and honourable members, who have always firmly adhered to his Majesty's interest, who have associated for him, who have given perpetual demonstrations of their enmity to France, and the abdicated family, and heartily desired to have all those things done which the Kentish gentlemen petitioned for; were averse to this, as they were to other fatal proceedings, which yet they had not power to prevent. If then a great and honest party in the house, and in a manner the whole people without doors, except the papists and jacobites, inveigh against the imprisonment of those gentlemen, as a notorious infringement of the liberties of the people of England: this, I hope, will be a sufficient apology for me, and secure me from the censures of all those who are apt to call such an undertaking as this an impudent arraignment

raingnment of the justice of the House of Commons, and of the whole people of England.

By way of farther justifying myself as to this particular, I must desire those people to consider that the House of Commons are not the whole people of England's representatives. It is very evident that the representatives of the people are those to whom, when they entered into society, they resigned up that power which they had in the state of nature, to punish offences against the law of nature, in prosecution of their own private judgment, and authorized to make laws for them, which are the rules to determine all the controversies, and redress the injuries that may happen to any member of the commonwealth. Thus the society, or, which is all one, the power legislative, are the only representatives of the people. The Commons may be said to represent those freeholders, citizens and freemen who chose them: but what are they to the whole body of the people, who are represented in the political state, and are entituled to all the benefits and advantages of it? This shews us what mistakes those men run into, who violently contend for an extravagant power in the House of Commons, because they think this is to assert the right of the people of England in the hands of their representatives. It will be allowed, I believe, in this favourable juncture,

to.

to say that the Lords, who have throughout this session spoken the sense of the great bulk of the people of England, and have with great wisdom, temper, and conduct, done all that was in their power to serve their country, and prevent its ruin; are (as they are a part of the legislature, which alone prescribes laws and rules to the community) no less representatives of the people of England than the Commons are. The services they have done the publick will, I hope, be gratefully remembered by the people, and help to convince them that they have erred greatly, and built our happiness and security upon too narrow and dangerous a bottom, who have so violently and unreasonably contended for the power of the Commons, and would derive all those advantages from them, which flow from the whole constitution. The regard which the people of England have had for that state, which in a mistaken notion they called their representatives, may be of very fatal consequence in breaking the balance of civil power, and shewing the grand enemy where he is to make his attacks to subdue a people whom his arms cannot hurt.

The brave Lacedemonian matron renounced her own son, when he fled from battle, and forgot the services which he owed his country. If the House of Commons were the representatives of the people of England in that sense, which some contend for, ought we to

B

have

have any great veneration for them, if they should quit the manifest interest of their country, and utter a sense quite different from that of the people? If any think they have done so in the matter now in debate, they will allow this to be some apology for censuring what they have done.

There is (as I said) another consideration which discourages me from publishing my thoughts on this subject; that is, the censure which I shall incur of serving the designs of a party. This is the grand artifice which those who have brought themselves under the suspicion of their country, have made use of to support their faction. To brand their antagonists with the name of Whigs, is the way they have taken to make them desert the service of the publick, and lift themselves under their banner. As this has been their management in other cases, so was it particularly remarkable when the Kentish petition was presented to the House. Sir E——d S——r, to bring an odium upon it, and make it a party business, nibbled a little at a particular name, and was pleased to say “it smelt of forty-one.” It was his remarking the name, that gave the gentleman who bore it, an opportunity to say, that he was very well known to be of a family, “which was remarkable for opposing “the usurpations of the Commons.”

Since

Since I find what use is made of those old names of Whig and Tory, how inconsiderate people are imposed upon by them, and seduced from the real interest of their country; before I discover of what party I am (which I will do to let my reader fairly see how far he ought to be prejudiced against me) I will crave leave to consider those names, with the different significations they have borne, and examine whether those that make use of them to serve their cause, can justly apply them to the factions among us.

A Tory, if we consider the most moderate acceptation of the name among those who wore it, was one who loved the English monarchy and hierarchy, had a religious regard for all the rights of them both, which he took to be of "divine institution," and abominated all those factious spirits, which decry'd the authority, or endeavoured to infringe the power of either. The generality carried the notion much higher, and would allow none to deserve that name, but such as were against having the king's power fettered by laws, or his will any way governed or restrained by the humours of his subjects. The Whig has enlarged this idea, and taken some other things into it. In the account he gives of a Tory, he tells us, that if he be for kings and bishops, they must be such kings and bishops as he likes: that in the late reigns he was not only for the *jure divino* right of our kings, and for

submitting all our laws and liberties to the royal will and prerogative, but was for raising the exorbitant power of France, and destroying Holland, in compliance with the desires of our princes, who could not otherwise make their government arbitrary, and introduce popery.

A Whig, as he is described by a Tory, with respect to his inclinations to civil government, is one who hates the power and prerogative of kings, and is perpetually raising factions in the state, in order to subvert monarchy, and set up a popular government: when considered with respect to the ecclesiastical state, he is represented to be an enemy to the hierarchy, one who would destroy the order of bishops, as well out of hatred to the order itself, as because they are the supporters of the monarchy. Upon this account it is that he is further represented to be a lover of the Dutch, because they are enemies of kingly government, and favourers of those factious male-contents. A Whig, if you will take his own character and description of himself, (generally speaking) tells you, that he is for kingly government, and the church, as by law established; that he prefers the English constitution to any other in the world; that those reflections were craftily and slanderously thrown upon him by the ministers and vassals of the last reigns, because he opposed their endeavours to bring in an arbitrary power.



power, which was to be according to the French model, and must be accompanied with popery; that he is indeed a lover of the Dutch (as are all the people of England, unless it be the French party) but not out of any factious design, or respect for their sort of government, but because they have been good friends and allies to us, have steadily and bravely withstood the growing power of France, and are a great bulwark of the protestant religion, and liberty of Europe.

These are the shortest accounts that we have of the ideas that belong to those old party names, from the descriptions of the opposite parties. Time, the greater discoverer of dark and mysterious designs, has let in some light upon us to help us to discern who are in the right; and from the management of affairs in this present juncture, we may easily learn whether those who make use of these names to serve their cause, can justly apply them to the factions among us.

The Tory party, as they affect to be called, is that part of the Ho—se of Com—ns which has governed this session, and directed all the proceedings which have alarmed the people of England, and made them every where exclaim against the management of the lower Ho—se. If we consider the men, and compare what they have done with the pretended principles of their party, it will hardly  
seem

seem odder to see Sir Ed—rd Sey—r bring in a bill to prevent Brib—ry, or Mr. J—n H—w exclaim against the exorbitant grants, or Sir Ch—r Mu—ve violent either against grants or a standing army; or to find them, who discovered a plain inclination to quiet France in the possession of all the Spanish dominions, quarrel at the treaty of partition for giving France too much, than to see them assume the name of Tories. Is not Ro—rt Har—y a ringleader in this Tory party? Is not his Bro—er Edw—rd a leading member? Does not he attend all ordinances, and as constantly every weekday frequent the service of the church (for his is a church party) in St. Stephen's Chapel, as he does the coven—cle every Lords-day? Are not the Fo—ys, Win—tons, St. J—n, Har—y of Wey—th, Barn—ton, Ha—nd, Ran—yl, and others of that leven, members of this fraternity? It is methinks hard to say how a faction blended with such a number of names noted for their inveteracy to the true Tory-principles, can be called a Tory party. Nothing sure but mere necessity and want of men to serve some great design, could make them who pretend to be genuine Tories, and consequently must hate a comprehension, and love to keep their party pure and unmixt, herd with a set of men so odious to them.

But upon second thoughts the wonder will not seem so great; whatever difference might formerly have been between them, it will, upon

upon a fair examination, now appear that there is a great agreement in their principles, and that those who keep up their faction, by retaining the name of Tories, and running down Whigs, have nothing but the bare name of their party, and are that very thing which they run down. This will be very evident to any one who will but take a short view of what they have done, and compare the loyalty of their behaviour with their loyal principles.

Formerly the Tory doctrine was, that the king was the breath of our nostrils, that we failed in our allegiance to him, and deserved not the name of loyal subjects, unless we valued his life more than our own, and would do all that lay in our power to preserve him and his government, by shewing an inclination to destroy his enemies. Is this the temper and spirit of our present Tories? Are not Sir Ed—rd Sey—r, Sir Ch—r Mus—ve, and forty more, at this very time members of the Ho—se of Com—ns, and of this Tory party, who when the conspiracy against the king was discovered, and an army lay ready to invade us, refused the voluntary association, which was reckoned the best expedient to preserve the king's life, and prevent the ruin of this kingdom? Formerly Tories reckoned it an act of duty and loyalty to repose an entire confidence in the king, and

*See their  
Names in the  
Appendix.*

to desire that he might be gratified, as with every thing else, so particularly with such an army as he desired: and in the late reign when the army consisted of nineteen thousand men; and the king had no other occasion for them but to terrify and afflict his own subjects, Sir Ch—r Mus—ve was pleased to say in the H—se of Com—ns, that it was a deplorable thing that the king should have no better army. Was it not that good old loyalist, and the men of that party principally, who reduced his present majesty to the allowance of seven thousand men; and were the cause of all the calamities that have been occasioned by it? In the reign of King Charles the second, when that gentleman had grants from the king, it would have seemed no less a prodigy in these kingdoms, to see a Tory House of Com—ns offer to intermeddle with the king's grants, as they have done, and make it an article of impeachment against a great minister to take a grant from the crown, than to see a church-party, who have told us that the king is Christ's vicegerent, and head of his church here upon earth, and that he has an uncontrollable right to dispose, as he pleases, of those fees with which the crown has endowed the church, offer to destroy the king's right by bringing in a bill to prevent the translation of bishops from one see to another. This bill designed no great favour to the king or the hierarchy, yet Sir J—n Pack—ton, who brought it into the house, must be thought  
a loyalist,

a loyalist, and true son of the church, because he tells churchmen, that he is so. Though it was a bill for the better securing the protestant religion, yet there are but few protestants I believe, concerned that it is adjourned (as the necessary methods for securing our religion are) to another session of parliament: if it be the next session tacked to a money-bill (as the jacobites say it will be) then we shall see the protestant religion as well secured, as some people would have it, who now turn the methods of securing it into jest and ridicule.

I could heartily wish that there were no other instances, but these I have here mentioned, of the ill treatment which both the monarchy and hierarchy have had from this loyal church-party (as they would fain be reputed) whose practices of late have been the plain reverse of what they formerly professed. Have not they arraigned the king's power in making treaties, which was never disputed in any former reign, no not by those demagogues in the reign of K. Charles the first, whose memories and practices they pretend to hate?

Have not they pulled down one principal pillar and support of the monarchy, by creating a distrust between the king and his people, by representing men unfit for the service of the publick, and excluding them from having any thing to do in the election of their representatives, who are in places of trust under

der the king? Have not they destroyed our very constitution, and make our government plainly popular under their sole management and direction? It is not a popular government, and a very intolerable one, where they have usurped the power of the king and the lords, and broken in upon the rights of the people, by taking the execution and legislation upon themselves, and punishing contrary to law? Have not they usurped the power of the king both executive and legislative, when they are grown to that exorbitancy of power, that they expect he will do whatever they require of him, though it be to punish some who have long toiled in the support of his government, and turn out others from places of publick trust, who have appeared with a warm and extraordinary zeal in his and the country's service; when they take upon them to censure and condemn what he does, though it be profitable to us and our friends, and his undoubted right and prerogative to do it: when, to prevent the mischief and confusion in which his enemies would involve his kingdoms, he has been forced to give the royal assent, where he knew it would not only hurt many of his friends, but a very great number of his good and loyal subjects, and be of very ill consequence to his affairs abroad? Have they not invaded and usurped the power of the lords, by endeavouring to destroy their jurisdiction by tying them to new rules and methods in their judicature, and forcing their  
assent

assent to laws by tacking of clauses, and leaving with them, together with the bill, all the ill consequences that should attend the rejecting it, which is plainly threatening them with the wrath and resentment of the nation, imposed on and incurred by them? Have they not been highly injurious to the people, and invaded their rights, *\* See the number of these imprisoned by them, Append.* by taking the execution of the laws upon them which belongs not to their province, and imprisoning such numbers of their fellow-commoners\*, as they have done this session?

It must be very extraordinary assurance that can make a party, which has not only thus arraigned the actions of his majesty, and been a constant clog upon the wheels of his government, but has likewise usurped his power, and brought in an arbitrary popular government, assume the name of loyalists, and call others turbulent, seditious republicans. If we would judge right between the two contending parties, we ought to consider their actions, and not the names and characters they themselves assume, or give one to another. If it be evident that the Tories have been highly prejudiced against his Majesty's government, if they have usurped upon the crown, and deprived it of many of its just rights, and the Whigs have born a constant affection to the king, and endeavoured to continue him in possession of all his rights and prerogatives: if in settling the succession in

the protestant line, Tories have not only discovered a perfect aversion to the act, and used artifices to elude it, but likewise framed that new bill of rights which was not contrived to recommend the crown, and make it amiable to the successors; and the Whigs, on the other hand, shewed themselves both eager to have the crown settled, and unwilling to have such a breach made in the prerogative; then it will be evident that the Whigs loyalty is greater than the Tories, or that the object they have placed it upon makes it more agreeable to us, and apter to promote our happiness and tranquility. If Tories be of those loyal principles they boast of, and the object be the abdicated family: if it be this loyalty of their principles, and the regard they have to the interest of that family, that has made them uneasy to the king, and downright republicans under his government, true Englishmen will find but little reason, as things now stand, to admire their principles or run into their party. The case in short is thus: to this loyal Tory-party (as they would be esteemed) we find all those attached, whose principles imbibed in the late reigns, make them firmly adhere to the interest of K. James: here we find all those in a manner who were against the abdication, recognition, who would not allow his present majesty to be rightful king, and refused to enter into the association to preserve him and his government: in this party are all those likewise whom either the  
love



love of money, or of the St. Germain family, or popery has reconciled to the French interest. It is most certain that there is not a man in the house engaged in any of these interests, who is not one of this party; and as certain it is that all the papists, friends of King James, and the French King, without doors, applaud their proceedings, and own that they are fairly represented by them.

From this account then it will appear that the parties are truly and properly to be distinguished into those who are for the Jacobite or French interest (for it is impossible to separate them) and those who are for our present settlement, or the true interest of England. This being the distinction of parties, I shall as cheerfully and readily acknowledge myself of a party, as St. Paul owned himself an Heretick after the way which his enemies called Heresy. If cunning men of the opposite faction be able carry their management much farther; if by a crafty use of the names of Church, Tory and Whig, they can impose on weak men, and keep them from being of this party, that is, of the number of those who are for the interest of England and protestant religion, and haters of French power and popery, we may thus be insensible drawn into the snares that are laid for us, and bring upon ourselves all the calamities we are afraid of. This may be, and I think it is manifest enough

enough to considering men, that the enemy, even this session, had made no small advances towards gaining his ends, if some men of the church had not had more strength of reason to rescue themselves from the jealousies that were craftily and falsely suggested, and better notions of the true interest of the church and dangers of the publick than others. The alarm given was, that the monarchy and church were to be destroyed by republicans and fanatics. The bishops saw where the real danger lay; that they were the thieves, who cried thief first; that those whom the Tories called republicans had sufficiently demonstrated by their behaviour to his Majesty, how little they deserved that name which their enemies had insidiously put upon them; that the republicans to be dreaded by them, were those who sided with the rankest of that sort, and ran into all the excesses of anarchy and faction against the present government, in order to dispose things for another revolution. They saw into what power they were grown, how they had usurped upon the king, how they had bullied the lords, and endeavoured to destroy the jurisdiction of that house, with which they knew that all the power and authority of their order must determine. And as in the lower house of parliament they saw the rights of the king, and the jurisdiction of the lords invaded, and such things done by those pretended royalists, as  
no

no one formerly could have mentioned without coming under the bann of the party: so in the lower house of convocation they saw the like invasion of their own rights by men of the same leven; and a power claimed altogether inconsistent with the presidency of the archbishop over his synod; a power absurd in itself, repugnant to the synodal rights enjoyed and excised by metropolitans and their comprovincials in all the purer ages of the church, and such as these gentlemen would have called downright rebellion in former times, when they thought it their interest to be what they now call themselves, but are not, true sons of the church. The archbishop, and those his worthy brethren (to whom God has given understanding as well as integrity suitable to the necessities of these times) see where the springs of these unhappy differences are: they know what care is taken (and for what design) to traduce the governors of the church, as enemies and betrayers of it, and to make zealous churchmen and others believe, that there are some men who are better patrons, and truer friends of the church than the bishops are. Time will shew these men their error, and take off that veil which yet lies over their eyes. They have shewn the church of England, by their behaviour this session, and adhering to those who are plainly in the interest of England, and for our constitution, what their notion is of parties. By their management (which has gained them

them the universal esteem and applause of the people) they have set things upon the largest and best bottom to preserve the church and state of England: they who advise other methods, and are for enlarging the bottom, by taken in persons who have hitherto appeared disaffected to the government, recommend men to the king, who would be less hurtful to him, if they appeared armed against him in the field, and take a ready and effectual method to bring in upon us French slavery and popery, which we shall yet be able to prevent, if the people of England will regard their true interest, and be careful to bring those into credit and power, who love their country, and cannot be reconciled to the interest of our enemies.

## IVRA POPVLI ANGLICANI.

THE death of the King of Spain, and the alteration made in the affairs of Europe by the settlement of his dominions, has caused a general consternation in all those countries which before had any apprehensions of danger from the growing power of France. Among them all, none has more reason to be alarmed than England; since, when we consider our situation, the affairs of commerce and religion, and the interest not only of the abdicated family, but of their great protector likewise, among us; we must allow that no other nation (unless perhaps we will except Holland) is more immediately affected, and likelier to feel the first dire effects of this unhappy conjunction.

This the people of England are generally sensible of; and 'tis to this sense of their danger, and the suspicion they have entertained of a much greater inclination to continue than destroy this union of power, that we are to ascribe their discontents, and the resentments they have expressed against their representatives, to a degree never before known in any age of government.

It was in the midst of these clamours that echoed through the kingdom, and the universal dissatisfaction of the people at the proceedings of the House of Commons, that the five Kentish gentlemen presented this following Petition, agreed to by the Gentlemen, Justices of Peace, Grand-Jury, and other Freeholders, at the General Quarter-Sessions holden at Maidstone, the 29th of April, in the 13th Year of his Majesty's reign.

“ WE, the Gentlemen, Justices of the  
 “ Peace, Grand - Jury, and other Free-  
 “ holders at the General Quarter-Sessions at  
 “ Maidstone in Kent, deeply concerned at  
 “ the dangerous estate of this kingdom, and  
 “ of all Europe; and considering that the fate  
 “ of us and our posterity depends upon the  
 “ wisdom of our representatives in parlia-  
 “ ment, think ourselves bound in duty hum-  
 “ bly to lay before this honourable House  
 “ the consequence in this conjuncture, of our  
 “ speedy resolutions, and most sincere endea-  
 “ vours to answer the great trust reposed in  
 “ you by your country.

“ And in regard, that from the experience  
 “ of all ages, it is manifest no nation can be  
 “ happy without union, we hope that no pre-  
 “ tence whatsoever shall be able to create a  
 “ misunderstanding between ourselves, or  
 “ the least distrust of his Majesty, whose  
 “ great actions for this nation are writ in the  
 “ hearts of his subjects, and can never, with-  
 “ out the blackest ingratitude, be forgot.

“ We

“ We most humbly implore this honourble  
 “ House to have regard to the voice of the  
 “ people, that our religion and safety may  
 “ be effectually provided for; that our loyal  
 “ addressees may be turned into bills of supply,  
 “ and that his most sacred Majesty (whose  
 “ propitious and unblemished reign over us  
 “ we pray God long to continue) may be en-  
 “ abled powerfully to assist his allies before  
 “ it be too late,

And your Petitioners shall ever pray, &c.

*Signed by all the Deputy-Lieutenants there  
 present, above twenty Justices of the Peace,  
 all the Grand Jury, and other Freeholders  
 then there.*

This petition was offered to the House on  
 the 8th day of May; the Gentlemen who  
 delivered it, and owned it at the Bar of the  
 House, were Mr. William Colepepper, Mr.  
 Thomas Colepepper, Mr. David Polhill, Mr.  
 Justinian Champneyes, and Mr. William Ha-  
 milton; for so I find all their names writ-  
 ten in the Votes, without the addition of Esq;  
 though four of them were Justices of the Peace,  
 and Deputy-Lieutenants of the County.  
 This was thought by some to be prudently  
 contrived to lessen the credit of the petition  
 among people without doors, and to make  
 others less eager to follow the example of  
 those gentlemen. Concerning the petition,  
 the House came to this resolution, That 'twas  
*scandalous,*

*scandalous, insolent and seditious; tending to destroy the constitution of Parliament, and to subvert the established Government of this realm.* The five Gentlemen they ordered to be taken into custody of the serjeant at arms. The treatment they had from him was very singular, and shewed that they were under the high displeasure of the House; for when he accidentally saw two of them talk together, he drew his sword upon his deputy for permitting it; and when, upon one of those gentlemen's demanding a copy of their commitment, (which they reckoned they had a title to, by virtue of the Habeas Corpus act) and his refusing it, the gentleman said he hoped the law would do him justice: his reply was, *He car'd not a Fart for the Law.* The reverence of the law is fallen very low indeed; when one, who as the honour of being a servant to the House of Commons, can presume to make so bold with it. In his custody they continued till the Thirteenth of May, when he (contrary likewise to the Habeas Corpus act) by an order of the House of Commons, and a warrant issued out from the Speaker, delivered them prisoners to his Majesty's prison at the Gate-house, where they continued to the end of the session. Besides this severe punishment inflicted by themselves, that they might shew their utmost resentment, and proceed to all the severities in their power, they, at the same time, resolved upon an address to his Majesty to put them out of the commissions of the Peace and Lieutenancy. The



The imprisoning of those Gentlemen is the fact which comes under my consideration. In order to handle this subject fully, it will be necessary that I consider these things : First, What power the House of Commons has to imprison ; Secondly, the Subject's right of petitioning ; Thirdly, what reasons the Gentlemen, Justices of the Peace, and Grand-Jury of the county of Kent, had to offer that petition when they did.

First, I am to consider what power the House of Commons has to imprison. Though this enquiry may by some be thought needless in this place, since a bare setting forth the subjects right to petition, will be sufficient to shew us what we are to think of the imprisoning of the Kentish petitioners ; yet the best way, I think, to enable us to make the truest judgment concerning this fact, will be to examine what provision the laws have made for the liberty of our persons, and how far we are subject to the will of the House of Commons. Such an enquiry would be highly necessary at this time, though the treatment of the Kentish petitioners had given no occasion for it. Great numbers of other subjects have been imprisoned by them this session, to the horror and amazement of all those who know the rights and liberties of the people of England, and therefore cannot but be concerned to see them so miserably infringed. To prevent such acts of power for the future, it is necessary that we shew that they are mere acts of power, and manifest incroachments

on the liberties and rights of the people. If there be any who still retain the old fond opinion they had of the peoples representatives, and think that our liberties are sufficiently provided for, when they are in the hands of such guardians, and that we can suffer no great inconvenience by any power which they are intrusted with; I would desire them to enquire how Mr. Buckley (committed for shewing the letters which he received from Sir. Edward Seymour and Mr. Colson) and Mr. Haslam (committed on Mr. Samuel Shepherd's account) were treated by the serjeant at arms in their confinement; and consider whether such severities are not sufficient to convince them, that the peoples representatives (as they are called) are not to be complimented with more power over the liberties of the people than our laws and constitution do allow them. Do not the fierce and rigorous prosecutions which we have seen make it evident to us, that men can fall under no resentment, no rage or malice, more outrageous than that of a party? Do not we see how regardless men can be of their reputation, what little and unbecoming artifices they can stoop to, when they are intent upon breaking an opposite faction? Is it fit then, that in such a disorderly and divided state, men should be intrusted with excessive power, who are inclined to make so ill use of it? If, by our constitution, the House of Commons were allowed a power to restrain the freedom of our persons as they should think fit, for the good of the community,

nity, the exercise of that power, however rigorous and severe, would (if it were free from the bias and influence of parties) be as patiently born from them, as any other hands whatsoever. But if by lawless and arbitrary power they invade that freedom which an excellent constitution entitles us to, it is impossible that a regard for the persons who afflict us should reconcile us to the suffering. It is my business here to discover whether they have done so, or no. The properest method to do this, and to satisfy this first enquiry concerning their power to imprison, will be, First, to examine how far our laws have secured the liberty and freedom of our persons; Secondly, to examine whether the power exercised by the Commons be not repugnant to the laws, and plainly destructive of our constitution.

As to the first enquiry, it is evident that both the common and statute law of this land, as they suppose men to have an inheritance in the liberty of their persons, so have they taken all imaginable care to secure them in the possession of this inheritance.

1st, As to the common law, we know what favour she shews to the liberty of our persons. This was so great, that formerly she suffered none to be imprisoned, but for force, and things done against the peace. Force indeed, she (being the guardian and preserver of the land) could not but abhor; those therefore that committed it, she accounted her capital enemies, and did subject  
their

their bodies to imprisonment. In all other cases she protected them from this restraint. This was our constitution in the time of the Saxon kings, and a long while after, till the 35th year of Henry III. who was the eighth king from the conquest: because bailiffs would not render accounts to their lords, it was then enacted by the Statute of Marlebridg, cap. 24. that their bodies should be attached. Had this law been a little unreasonable, it is no great wonder that it should pass at that time, considering the weakness of the king, and the power of the lords, in whose favour it was made. We may remark concerning it, that the first act to restrain the subjects liberty was procured by those lords who forced a charter from the king to confirm their own liberties three reigns after this (Edw. III. 17.) because men took no care to pay their debts, it was provided by another statute, that their bodies should be attached. Before these Statutes, as I said, no man's body was subject to be taken or imprisoned otherwise then as afore said. As the moderation of our ancestors in not enacting any such laws, in all the ages that went before, demonstrates the great regard they had for liberty; so did the course and practice of the law afterwards fully shew how great a punishment they reckoned to have it restrained, as by those statutes. Before the reign of King James I. it was allowed, that he who died in prison discharged the debt, how great soever it was, for which he was committed. The reason was, because they  
thought

thought imprisonment a punishment so great, that no other satisfaction ought to be demanded after it. It was the opinion they had of the greatness of the punishment, that made our merciful forefathers bear with men in using such acts of force to enlarge themselves, as are not now allowed. The statute *de frangentibus prisonam*, made in the first year of Edward the Second, enacts, That *no one shall undergo judgment of life or members, for breaking of prison alone, unless the cause for which the person is imprisoned, require such a judgment.* And the mirrour of justices, which was writ before this king's reign, where it reckons up the abusions of the common law \*, tells us, *That it is an abuse to hold an escape out of prison, or the breach of the goal, to be a mortal offence, FOR AS MUCH AS ONE IS WARRANTED TO DO IT BY THE LAW OF NATURE.* All this cannot be wondered at, when we consider how great an evil Imprisonment is reckoned, and that it is in law called *Civil Death*: *Perdit domum, familiam, vicinos, patriam*; he loses his house, his family, his wife, his children, his neighbours, his country, and is condemned to live among wretched and wicked men. For this reason it is that as a man, if he be threatened to be killed, may avoid a feofment †, gift of goods, &c. So it is, if he be threatned to be imprisoned, or kept in dures; that being

\* *Mir. of Justice. c. 5. Sect. 1.*

† 39 H. 1, 65, &c.

reckoned to be a Civil Death, any specialty or obligation made by him is null in law: and he may avoid the action brought upon such specialty, by pleading that it was made by duress.

As the common law has shewn a great regard, so, secondly, has the **STATUTE LAW** of this land abundantly provided for the liberty of our persons. This is evident from many acts of parliament. The first that I shall take notice of, is the grand charter of the liberties of England, first granted in the 17th year of King John, and renewed twice in the reign of King Henry the third. By that charter it is provided, that “ no freeman shall be  
 “ taken or imprisoned, unless it be by judge-  
 “ ment of his peers, or by the laws of the land :” that is, by jurors, who are his peers ; or by due process of law. That this is the meaning of those words *per legem terræ*, or law of the land, will plainly appear from divers other statutes which explain those words. In the 25 Ed. III. c. 4. we find them thus explained in these words : “ Whereas it is contained in the  
 “ great charter of the franchises of England,  
 “ that no freeman be imprisoned, or put out of  
 “ his freehold, nor of his franchise, nor free  
 “ custom, unless it be by the **LAW OF THE**  
 “ **LAND**, it is accorded, assented, and estab-  
 “ lished, that from henceforth none shall be  
 “ taken by petition or suggestion made unto  
 “ our Lord the King, or to his council, unless  
 “ it be by indictment or presentment of his  
 “ good and lawful people, of the same neigh-  
 “ bourhood

“ bourhood where such deed was done, in  
 “ due manner, or BY PROCESS MADE BY  
 “ WRIT ORIGINAL AT THE COMMON  
 “ LAW; and that none be out of his fran-  
 “ chises or freehold, unless he be duly brought  
 “ in to answer, and forejudged of the same  
 “ by COURSE OF LAW: and if any thing  
 “ be done against the same, it shall be re-  
 “ dressed, and held for null.” The 28th of  
 Edw. III. is very direct to this purpose: there  
 it is enacted, “ That no man, of what estate  
 “ or condition he be, shall be put out of his  
 “ lands or tenements, nor taken nor impris-  
 “ oned, &c. without he be brought in to an-  
 “ swer by due PROCESS OF LAW.” 36.  
 Ed. III. Rot. Parl. Num. 9. Amongst the peti-  
 tions of the Commons, one of them being  
 translated out of French into English, is thus;  
 “ First, That the great charter, and the char-  
 “ ter of the forest, and the other statutes made  
 “ in his time, and the time of his progenitors,  
 “ for the profit of him and his commonwealth,  
 “ be well and firmly kept and put in execu-  
 “ tion, without putting disturbance, or making  
 “ arrest, contrary to them, by special com-  
 “ mand, or in any other.” The answer to  
 this petition, which makes it an act of parlia-  
 ment, is, “ Our lord the king, by the assent  
 “ of the prelates, dukes, earls, barons, and  
 “ the commonalty, hath ordained and estab-  
 “ lished, that the said charters and statutes be  
 “ held and put in execution according to the  
 “ said petition; which is, that no arrest should

“ be made contrary to the statutes, by special  
“ command.”

This explains the matter fully, and is of as great force as if it were printed; for the Parl. Roll. is the true warrant of an act, and many are omitted out of the books that are extant,

36. Ed. III. Rot. Parl. Num. 30. explains it further; for there the petition is, “ Whereas  
“ it is contained in the grand charter, and  
“ other statutes, that none be taken or imprisoned by special command, without indictment, or other due process to be made  
“ by law; yet oftentimes it hath been and still is, that many are hindered, taken, and imprisoned without **INDICTMENT**, or  
“ **O’HER PROCESS** to be made **BY THE**  
“ **LAW** upon them, as well of things done  
“ out of the forest of the king, as for other things: that it would therefore please our  
“ said lord to command those to be delivered  
“ who are taken by special command, against  
“ the form of the charters and statutes aforesaid.” The answer is, “ The king is pleased, if any man find himself grieved, that he  
“ come and make his complaint, and right  
“ shall be done unto him.” 37. Edw. III. c. 18. agreeth in substance, when it saith, “ Tho’  
“ it be contained in the grand charter, that no  
“ man be imprisoned, nor put out of his freehold without process; nevertheless divers  
“ people make false suggestions to the king  
“ himself, as well for malice as otherwise,  
“ whereat the king is often grieved, and di-  
“ vers



“ vers in the realm put in damage, against  
 “ the form of the said charter: wherefore it is  
 “ ordered, that all who make such suggestions,  
 “ be sent with the suggestions before the chan-  
 “ cellor, treasurer, and the grand council, and  
 “ that they there find surety to pursue their  
 “ suggestions, and incur the same pain that  
 “ the other should have had, (if he were at-  
 “ tainted) in case that their suggestions be  
 “ found evil, and that then process of the  
 “ law be made against them without being  
 “ taken and imprisoned against the form of  
 “ the said charter and other statutes.” Here  
 the law of the land, in the great charter, is  
 explained to be process of the law.

From what I have here delivered, it ap-  
 pears what care both the common and statute  
 law have taken of the liberty of our persons;  
 that the former abhorred imprisonment, and  
 never allowed it, unless it was when men had  
 been guilty of force, and rendered themselves  
 enemies to the community; and that the latter  
 has frequently enjoined that it shall not be  
 inflicted, unless it be by indictment, or such  
 due process as the law requires. What we  
 have here said will assist us in

The second thing proposed, which was  
 to enquire, whether the power exercised  
 by the House of Commons be not an  
 invasion of our legal rights, and tends  
 not to subvert even our constitution? The  
 Laws are called (Edw. VI. fol. 36.) “ The  
 “ great inheritance, and the inheritance of  
 “ inheritances, without which a man can have  
 “ no inheritance.” The greatest inheritance  
 a man

a man hath is the liberty of his person, for all others are necessary and subservient to it. If then the H—se of Com—ns have invaded that fundamental liberty of our persons, which by Magna Charta, and several other statutes, as well as the most ancient customs and laws of this land, we are entituled to, this will inform us how far the powers exercised by them have destroyed our legal rights. Magna Charta says, that “no freeman shall be taken or imprisoned, but by the judgment of his peers, or the law of the land:” but it is certain, that men imprisoned by them underwent no judgment of their peers, were not committed by legal process, or by any law that we know in this land. I know it will be said, that by the words of Magna Charta we are to understand not legal process, but the law of the land generally, and that the words extend to all the laws in the realm. Since then there are laws and customs in parliament, and by those customs imprisonment is allowed, it will be said in favour of the House of Commons, that they in committing people do not necessarily destroy that right which we have by Magna Charta. It is true, there are rules and customs in parliament, and by those customs they have a power to imprison: but that is a power which extends to their own members; such a power is necessary within their society, because without it, it would be impossible to keep the members of it to such rules and orders as must necessarily be observed by so great a body of men, engaged in so weighty and important business.

business. Confinement here is no violation of the right men have to the liberty of their persons by Magna Charta ; that right they all give up, and submit to the rules of the House, when they make themselves members of it. It must be confessed that this power has been extended farther to persons who are not members, as in cases of breach of privilege, and contempt. I shall not here take notice of the rise of this power, and how great a grievance the exercise of it has been to the people of this land ; but must observe, that if a liberty has been taken of confining those who offered violence to members in their own persons, or in their servants or estate, because such molestations, if allowed, might give them too great disturbance, and ruin the business of the public ; yet it must not from hence be inferred, that the House of Commons has an absolute or unlimited power to imprison whom, and for what cause they please. If there are some confinements ordered by that House, which are not, it is sure there may be some which are repugnant to Magna Charta ; otherwise Magna Charta, and all the other acts which designed to secure our liberties from the invasions of our kings, whose subjects we are, and to whom we owe allegiance, have left us exposed to the arbitrary will of our fellowcommoners, who (thanks be to God) have yet no such rule or dominion over us. Whether they have invaded our rights contrary to Magna Charta, and in such instances as are a subversion of our constitution, will be evident

dent to us, if we look over the catalogue of their prisoners, and examine the cause of their commitment. The five Kentish gentlemen, whose case I am now considering, were imprisoned for a fact no more prohibited by the laws of this land, than praying for the king, or that God would direct the consultations of the parliament, to the advancement of the safety, honour, and welfare of our sovereign and his kingdoms. It would be too tedious to descend to particulars, of the great number which might here be taken notice of, as pertinent to my purpose, I shall mention only two, Mr. Paschal and Mr. Whitacre. The former was sent to the Tower, and kept there to the end of the sessions, for not giving in his accounts after the manner prescribed by the commissioners of accounts, pursuant to an act of parliament. The latter was committed, and continued likewise in his confinement till the end of the session, for being faulty (as the House of Commons thought) in the discharge of his office, in an instance of taking bail. After his confinement, his accounts which he had passed, were examined, and they were made another charge against him. Whether those gentlemen were faulty, or no, it concerns not me here to enquire. Mr. Paschal has printed his case, and it is a very hard one; the crime for which he was sent to the Tower, was for not doing what was not in his power to do. But though he and others were guilty, it is certain that the punishing of them after that manner is nevertheless an injury to the public.

If

If Mr. Paschal was guilty of contempt, and punished thus for not obeying an act made in the session of another parliament, and Mr. Whitacre for being faulty in the discharge of his office, may not they for the same reason charge all with contempt who disobey acts of parliament, or are faulty in the execution of their offices, and punish them after the same manner? Either they claim such a power as this, or they do not: if they do not claim such a power as the right of the Commons of England, then they own that they have been injurious to those gentlemen in imprisoning them, and destroying that great and fundamental right which they have to the liberty of their persons. If they do claim such a power, they may seem to assume a power which overthrows our whole constitution. This will be manifest, when we consider the several instances wherein it subverts the laws, the rights and liberties of the people.

First, it may be thought an incroachment on the power legislative: for where the Commons are pleased to inflict such a punishment for the violation of a statute, as is not mentioned in the statute, and was never designed by the legislators, there they may seem to assume an authority at least equal to that of the legislative. To create a new punishment, and superadd it to a law, may be allowed to be the act of a power equal to that which made it; and in the present case, some may reckon it in some sense greater, since that addition makes it a law with a punishment *ex post facto*,  
 F - - - which

which is a power inconsistent with the freedom of a people, and therefore is never made use of by our legislators.

Secondly, it may be deemed an incroachment on the power and rights of the king. He, by our constitution, has the supreme and sole executive power: he is *caput & salus reipublicæ*: the laws are his, and the execution of them, wherein the safety and freedom of his people consists, are committed to him, and those who derive their authority from him. Wherever therefore any part of his people take upon them to inflict punishments without being authorised by him, or, which is the very same thing, by his laws, some may think that his rights are thereby invaded, and his majesty lessened, not only by that invasion, but likewise by his being thereby made, instead of a ruler of a brave and free people, a titular king of poor and contemptible slaves.

Thirdly, some may account this an invasion of the rights and liberties of the kingdom, and such a one perhaps as destroys freedom, and introduces downright slavery. It may be worth Englishmen's while to consider, whether they can form to themselves any other notion of a state of freedom and slavery, than that in the former, men are governed by laws made by their representatives, and are liable to no punishments but what are prescribed by the laws of that state; and in the latter, that they have no certain rule to walk by, but are subject to the mere will of one or more who claim a power and dominion over them. If  
they

they find these notions to be true, they will do well to consider again, whether they can avoid making this inference, that they who assume a power to punish a people who live under the direction of the laws, without a rule or law, destroy the rights and liberties of the people, take away their freedom, and reduce them to a perfect state of slavery.

Against what I have here said, it is, I know, generally objected, that justices of the peace, judges, and others, are allowed to imprison freemen, without being impeached of destroying that liberty which they enjoy by Magna Charta, and the common law of this land: Why then these outcries against the honourable House of Commons? The answer is very plain and easy: the former are officers appointed by the king, who is invested with the whole executive power, to preserve the peace of the kingdom; and the latter are commissioned to do the same, and to preside in his courts, to administer justice to his subjects, which it is impossible for them to do without having a power given them to confine evil and rebellious subjects. The lower House of Parliament is no court, has no need of such a power, being called by the king to assist him with their counsel in affairs of the greatest moment and weight, to bear a part in the legislature, and to represent the grievances of the nation, and desire to have them redressed; but not to redress them themselves, by taking upon them to punish offenders. If judges, or justices of the peace, or others who

are intrusted with this power, exceed their commission, and are oppressive and injurious to the subject, there is a superior jurisdiction to appeal to for satisfaction, and laws to determine, whether injury has been done or no: but if a House of Commons will punish thus without law, there is no authority, or power on earth, from which relief may be had by appeal, which, in our constitution, is a very good reason against their having such a power; for the lord chief justice Hufsey tells\* us, That Sir John Markham told King Edward IV. that he could not arrest a man, either for treason or felony, as a subject might, because, that if the king did wrong, the party could not have his action against him. It may be further urged, that as judges having a power to settle and determine property, is a reason why they should have a power to imprison, because the one is impracticable without the other: so the House of Commons not having a power to determine concerning property, is a reason why they should not have a power to imprison. *Cui non convenit minus ei non majus convenit*, is a maxim among the Logicians, and is a good argument in the present case. If the House of Commons have no power over our goods, then *a fortiori* not over our persons to imprison them, because they are much more valuable than either goods or lands. This Christ himself declares, when he tells us, That the body is more than raiment, whereby raiment the Canonists understand all outward things

\* 1 Hen. VII. fol. 4.



things whatsoever. Our laws also make this clear, and give the preference to the body. It is a rule in law, that *Corporalis injuria non recipit æstimationem è futuro*: so as if the question be not for a wrong to the person, the law will not compel him to sustain it, and afterwards accept a remedy; for the law holds no damage a sufficient recompence for a wrong which is corporal. There are cases in law that prove this rule. If one menace me in my goods, or that he will burn the evidence of my land, which he hath in his custody, unless I will make unto him a bond, there I cannot avoid the bond by pleading of this menace. But if he restrains my person, or threatens me with battery, or with burning my house, which is a protection for my person, or with burning an instrument of manumission, which is an evidence of my enfranchisement; upon these menaces I shall avoid the bond by plea. So if a trespasser drive my beast over another man's ground, and I pursue to rescue it there, I am a trespasser to him on whose ground I am: but if a man assault my person, and I for my safety fly over into another man's ground, there I am no trespasser to him: for *quod quis in tuitione sui corporis fecerit, jure id fecisse existimatur*; what a man does in defence of his person, he is reckoned to do it lawfully: nay, which is more, the common law did favour the liberty, not only of freemen, but even of the persons of bond-men and villains, who have no right of property in lands or goods, as freemen have. The lord, by the law, could  
not

not maim his villain: nay, if he commanded another to beat him, and he did it, the villain should have his action of battery for it against him. If the lord made a lease for years to his villain, if he pleaded with him, if he tendered him to be a champion for him in a writ of right, any of these acts, and many others, were in the law enfranchisements, and made those villains freemen. From all which it appears, that the law has a greater regard to our persons than estates; which, as I said, is a good argument why the House of Commons, who have nothing to do in regulating or determining our other properties, should not have a power over the liberty of our persons.

Sir John Fortescue, the learned chancellor to King Henry VI. writing (*de Dom. Polit. & Regal.*) of this kingdom, saith, *Regnum illud in omnibus nationum & regum temporibus, iisdem quibus nunc regitur legibus & consuetudinibus regebatur.* This saying will not suit our times; we cannot say, that the laws and customs which we are governed by, are the very same with those by which this kingdom was governed in the times of all the former kings, and the several nations that came in hither. The power assumed by the House of Commons, in executing laws, and imprisoning men, is a very new thing, and makes our present state very different from our antient constitution. The last year it had its beginning, when Sir Ric—d Lev——g was sent to the Tower, and kept there to the end of the session, for telling a friend some things that were  
spoken

spoken by some of the other Irish commissioners, in their private conversation. This commitment, however unreasonable it seemed to some, who knew that he was less guilty of any breach of privilege than if he had spoken reflectingly of a member of parliament's horse, yet was not wondered at by others, who considered the Resuming Bill itself, knew for what end it was set on foot, and that they were resolved to strike a terror on people, and frighten them from saying any thing that might endanger that bill. That power which began the last year, has had a mighty growth this session; and if it grow on at the same rate, it is easy to see what our constitution will come to in a very little time. "Old ways are the best ways," is a saying that has been formerly written on the walls of the House of Commons: I could wish that it were now written both there, and in the hearts of the members; there never was so great occasion for it; for if these innovators be suffered to drive on thus furiously, many who adhere to their faction without seeing their designs, will make themselves parties in bringing insensibly a calamity on this land, which they will not be able to remedy by any after efforts. A very little reflection will shew us how this may be. Should there be any design to alter our constitution or present settlement, one ready way is to carry things high in the House of Commons, and to make the orders and resolutions there as grievous to the people as possible, that they being enraged at their domination and rigorous

rous proceedings, may be the better inclined to run into another extreme. We know what alteration they by their acts of power have already made in the opinions and affections of people; and the danger which some fear is, that, if they go much farther, they will give too many a surfeit, and make them nauseate the Commons, who ought to be, what they reckon themselves, trustees and guardians of the liberties of England. It may therefore well become good men, who love the happiness, tranquillity, and liberty of their country, to reflect seriously, and consider with themselves, whether this may not be the design of some who now pretend to be mighty sticklers and advocates for liberty. There is another good reason why men should be jealous of, and make it their business to check, this rampant growing power of the Lower House. It is the general voice of the people throughout this kingdom, as we are informed from all the corners of it, that gold has carried on a great negotiation among us. Some are of opinion, and I must own not without a great deal of reason, that the continual clamours which have been artificially, but upon too weak grounds raised, and the outrageous and unreasonable proceedings which we have seen, are great confirmations of the truth of what has been reported. This is most certain, that where "corrupt orators" (to speak in the language of a very experienced doctor\*)

\* *Discourse on the Public Revenues and Trade of England, Part II. pag 292.*

“bring their subtilty and eloquence to market,” they must follow the instructions of him whose pay they receive, they must set afoot factions and brigues, bring all the confusion they can into their native country, pull down the fence of the laws, destroy the credit and interest of those who are ablest and most inclined to oppose his designs, and in short do whatever he requires of them. If among us there be any such corrupt members, it is plain, that to make themselves the more considerable, and raise the price of their voices, they must think it their business to study ways and means to afflict their fellow subjects, to embarrass affairs, and bring confusion and disorder into the state. One ready way therefore to defeat the designs of such men, will be to keep them from running into any excesses of lawless and arbitrary power, and tie them to the same rules that directed the actions of their wise and just predecessors. As keeping things in this temperament, and adhering to our constitution, will be a means to defeat the measures of a foreign tyrant, so will it, in some men’s opinion, put an end to the fears and calamities of a tyrannic slavery brought upon us by fellow subjects at home. Tyrannic slavery, did I say? Some may call it so, when in a free state, where the whole legislative only has a power to set down what punishment shall be inflicted on the several transgressions that are committed, a part of it assumes a power to inflict one of the severest punishments: when a few who are chosen to be trustees and guardians

of the people's liberties, bring the people under their absolute power, and compel them to that which is against the right of their freedom. To be free from such force is the only security men have of their preservation, and reason bids them to look on those as enemies to their preservation, who would take away that freedom which is the fence to it; and so conclude that they have a will and design to take away every thing else, since that freedom is the foundation of all the rest.

From what I have here delivered concerning the power of imprisoning in the Lower House, it is evident, I think, that if petitioning, as the Kentish gentlemen did, had been an illegal act, and the punishment enjoined by the law had been imprisonment, yet it belonged not to them to inflict that punishment, but to make application (as they have always done heretofore) to have the law executed against them. But if what they did was strictly agreeable to law, this will make their commitment a greater violation of the rights of the community. That it was so, will appear, when we consider

The second thing proposed, "the subject's right of petitioning." This right I take to be as large and ample a one, and what will as little bear controverting, as any thing that we can think of, since it is justified by the law of nature, the practice of all states in the world, and is allowed by the laws of this land.

It

It is certain that nothing can be more agreeable to nature, and a plainer dictate of reason, than that those who apprehend themselves aggrieved be allowed a liberty to approach those by petition who know their grievances, or perhaps are the authors of them, and consequently able to redress them. When men entered first into society, and gave up that right which they had to secure themselves in the state of nature, it is manifest that they did it for the preservation of property, which is the end of government. This necessarily supposes, and indeed requires, that people should have property, without which they must be supposed to lose that by entering into society, which was the end for which they entered into it. If men entered into Society to preserve it, and therefore are so entitled to it, that (as a very learned and ingenious author \* tells us) "the supreme power cannot take from any man any part of his property without his own consent." Can any absurdity be so gross as to imagine, that men gave up their right to pray for redress, if they thought themselves injured in their properties? or that the supreme power may hinder them to pray for that which they have not a right to deprive them of? Wherever, therefore, any government is established, there the natural right which people had to secure what was their own, must be so far at least continued, as to allow them a liberty to

\* *The author of two treatises of government, page 277.*

petition for what they think their right, because this is a privilege which they could not give up when they entered into society. And where there has been no government but the prince's will, even there this right has seemed so natural and agreeable to reason, that it has not been denied. This might be seen in all the arbitrary governments of the world. In the Roman empire Julius Cæsar, when he was in the height of his power, and made himself Perpetual Dictator, permitted the people to represent the hardships that were put upon them, and pray for redress. And in the reign of other princes who exercised a despotic power, whilst the *lex regia* prevailed, *rescribere principi*, to petition the prince, and set forth their grievances, was allowed their subjects as the natural right of mankind.

If this right be natural, the people of England, who have lost as little by entering into society as any others, must have as just and ample a claim to it as any nation in the world. That they have a right to represent their sufferings, and pray for a relaxation of them, is evident from the opinions of our sages of the law, from what our kings have permitted and declared, and what has been declared and enacted in parliament.

Our books are very clear in this matter. My Lord Chief Justice Hobart tells \* us, that it is lawful for any subject to petition the king for redress in an humble manner; for (says

\* *Wrenham's case*, vet. *Mag. Chart. Exil. Hugon. de Spencer.*



he) “ Access to the sovereign must not be shut up in case of the subject’s distress.” This right was fully proved by the learned counsel at the trial of the seven bishops, and allowed by the judges. It was one of the crimes for which the Spencers were banished, that they hindered the king from receiving and answering petitions from great men and others. And one article against the Lord Strafford was, that he issued out a proclamation and warrant of restraint to inhibit the king’s subjects to come to the fountain their sovereign, to deliver their complaints of wrongs and oppressions.\*

As the sages of the law have told us that it is our undoubted right, so have our kings in in all ages permitted us by petition to inform them of our grievances. In the reigns of King Edw. II. and King Edw. III. such petitions were frequent; and then even Ireland was allowed to represent their grievances,† and petition for a parliament.

Doctor Burnet,‡ the learned Bishop of Salisbury, informs us, that King Henry VIII. told his subjects, when in arms against him in Yorkshire, that they ought not to have rebelled, but to have applied themselves to him by petition.

King James I. by a proclamation published in the 11th year of his reign, begins thus: “ The complaints lately exhibited to us by “ certain noblemen and others of our king- “ dom of Ireland, suggesting disorders and

\* *Rushworth’s Collect.* 721.—† *Claus. 10. E. 2. M. 28. pro communitate Hiberniæ.*—‡ *Hist. Reformat. part I. p. 231.*

“ abuses

“ abuses, as well in the proceedings of the  
 “ late-begun parliament, as in the martial and  
 “ civil government of the kingdom, we did  
 “ receive with all extraordinary grace and fa-  
 “ vour.” And by another \* proclamation he  
 declares, that “ it was the right of his subjects  
 “ to make their immediate addressees to him by  
 “ petition.” And in another † he tells his  
 people, that “ his own, and the ears of his  
 “ privy council, did still continue open to the  
 “ just complaints of his people ; and that they  
 “ were not confined to times and meetings  
 “ in parliament, nor restrained to particular  
 “ grievances.”

It appears by the Lords Journals in the year 1640, that the House of Lords, both spiritual and temporal, *nemine contradicente*, voted thanks to those lords who petitioned the king at York to call a parliament : And that king, by his declaration, 1644, declared his royal will and pleasure, that all his loving subjects who have any just cause to present or complain of any grievances or oppressions, may freely address themselves by their humble petitions to his sacred majesty, who will graciously hear their complaints.

On Wednesday the 27th of October, 1680, it was resolved in the House of Commons, *nemine contradicente*, “ That it is, and EVER hath  
 “ been, the undoubted right of the subjects of  
 “ England to petition the king for the call-  
 “ ing and sitting of parliaments, and redress-

\* Proclam. dat. 10 July, 19 Jac. — † Proclam. dat. 14 Febr. 20 Jac.

“ ing of grievances.” It was then likewise resolved, *nemine contradicente*, “ That to tra-  
 “ duce such petitioning as a violation of duty,  
 “ and to represent it to his majesty as tumult-  
 “ tuous and seditious, is to betray the liberty  
 “ of the subject, and contribute to the design  
 “ of subverting the ancient legal constitution  
 “ of this kingdom, and introducing arbitrary  
 “ power.” On the Friday following (as we find in the same Journal) it appearing to the House, upon the examination of several witnesses at the bar thereof, upon the evidence against Sir Francis Withins, as well as upon his own confession, that he had presented an address to his majesty, expressing an abhorrency to petition his majesty for the calling and sitting of parliaments; it was “ resolved,  
 “ that Sir Francis Withins, by promoting and  
 “ presenting to his majesty an address ex-  
 “ pressing his said abhorrency, hath betrayed  
 “ the undoubted rights of the subjects of Eng-  
 “ land.” It was moreover ordered, that he should be expelled the House, and that he should receive his sentence upon his knees.

This right of the subject to petition is farther confirmed by the statute law of this land, particularly in an act made in the thirteenth year of King Charles II. the enacting part of which I will here at large set down, because it is a plain declaration of the subjects’ right in the case of the petition now under our consideration.

“ Be it enacted, &c. that no person or per-  
 “ sons whatsoever shall, from and after the  
 “ first

“ first of August, 1661, solicit, labour, or  
 “ procure the getting of hands, or other con-  
 “ sent, of any persons above the number of  
 “ twenty or more, to any petition, complaint,  
 “ remonstrance, declaration, or other address  
 “ to the king, or both or either Houses of  
 “ Parliament, FOR ALTERATION OF MAT-  
 “ TERS ESTABLISHED BY LAW IN CHURCH  
 “ OR STATE, unless the matter thereof have  
 “ first been consented to, and ordered by  
 “ three or more justices of the county, or  
 “ by the major part of the grand jury of the  
 “ county or division of the county where the  
 “ same shall arise, at their public assizes, or  
 “ general quarter sessions; or if arising in  
 “ London, by the lord mayor, aldermen, or  
 “ commons in common council assembled:  
 “ And that no person or persons whatsoever  
 “ shall repair to his majesty, or both or either  
 “ Houses of Parliament, upon pretence of  
 “ presenting or delivering any petition, com-  
 “ plaint, remonstrance, or declaration, or  
 “ other addresses, accompanied with exces-  
 “ sive numbers of people, not at any one  
 “ time above the number of ten persons, up-  
 “ on pain of incurring a penalty not exceed-  
 “ ing the sum of one hundred pounds in mo-  
 “ ney, and three months imprisonment.

“ Provided always, that this act, or any  
 “ thing therein contained, shall not be con-  
 “ strued to extend to debar or hinder any per-  
 “ son or persons, not exceeding the number  
 “ of ten aforesaid, to present ANY PUBLIC  
 “ OR PRIVATE GRIEVANCE OR COMPLAINT  
 “ TO

“ TO ANY MEMBER OR MEMBERS OF  
 “ PARLIAMENT, after his election, and du-  
 “ ring the continuance of the parliament, or  
 “ to the king’s majesty, for any remedy to be  
 “ thereunto had.”

Concerning this statute we may observe four things: First, That it allows (as Mr. Serjeant Levins observed in the trial \* of the seven bishops, and we are taught by several other good authorities †) that by the law of the land before, it was the settled and undoubted right of the subjects of England, to apply themselves to the king, or either or both houses of parliament, by petition, to have their grievances redressed. Secondly, That where it limits this power of the subject, and requires that the petition shall be consented to and ordered by three or more justices of the county, or by the major part of the grand jury of the county, or division of the county where the same matter shall arise, or by the lord mayor, aldermen, or commons in common council assembled, if it arise in London; it is only in a particular case where the address is for “ Alteration of  
 “ matters established by law in church or  
 “ state.” Thirdly, That even in this case, the concurrence of those persons is not required, unless it be where there are more than twenty hands to the petition. Fourthly, That the act extends not to grievances or complaints, either publick or private, but that they may be presented to the king or parliament, without any

\* *Trial of the bishops*, p. 121. † *Id.* *The resolutions of the law. Coke’s jurisdiction of courts.*

of those previous formalities, provided that the petition or address be not presented by more than ten.

Having mentioned this act, which (though made to limit and restrain the subject, and curtail his natural right of petitioning) is a full declaration of the peoples right to apply themselves to the king or parliament, “ by petition, “ for the redress of their grievances, and for “ obtaining such things as they apprehend necessary or beneficial to the safety or well-being of the nation.” I need not urge any other authorities, nor take notice even of that act passed since the revolution, wherein the rights of the people are contained, and that of petitioning is declared to be one. It is evident to any reader of the most ordinary capacity, that the Kentish petition is warranted by the law of the land, and so plainly within the letter of that act, that those men are forced to acknowledge it, who take a great deal of pains to justify all the proceedings of the House of Commons. Was it not then (to use the words of Legion) “ illegal, and a notorious breach of the liberty of the subject, “ and setting up a dispensing power in the “ House of Commons, to imprison men who “ were not their members, by no proceedings but a vote of the House, and to continue them in custody SINE DIE?” A late Pamphleteer, by way of answer to this tells\* us, “ that to say this is done by a single vote,

\* *England's enemies exposed, and its true friends and patriots defended*, p. 40.

“ without

“ without other proceedings, is mere babling  
 “ and nonsense ; for imprisonment is the first  
 “ step in order to future proceedings, and  
 “ practised by every single magistrate.” What  
 does this Scribbler mean? Were not those pe-  
 titioners imprisoned by a vote of the House,  
 without any other proceedings? Was there  
 any indictment or legal process to try whether  
 they were guilty of any trespass against the  
 law? For what reason does he tell us, that,  
 “ Imprisonment is the first step in order to fu-  
 “ ture punishment?” Would he thereby insin-  
 uate that their crime was such as might be  
 further punished by law? Their judges in St.  
 Stephen’s chapel knew very well that it could  
 not. If it could, why were they not proceeded  
 against? Why were they kept in prison until  
 the end of the session? If they could not, why  
 should they be imprisoned at all, since it could  
 be in order to no future proceedings? But he  
 tells us, that, “ this is practised by every ma-  
 “ gistrate.” It is true; they imprison, but it is  
 to keep the peace, and in order to future punish-  
 ment; and what they do is allowed and war-  
 ranted by the law of the land. From what I  
 have already said in this discourse, it will ap-  
 pear how absurd it would be to make this an  
 argument for the Commons having such a  
 power as they have used in imprisoning those  
 gentlemen. The reader will from hence judge  
 whether Legion, or his author, is most guilty of  
 babling and non-sense. The design of this  
 pamphleteer is to throw all the dirt he can on  
 the late ministry, to bring them under the

odium of the nation, (a work which the Jacobites, the French party, and Papists of England are now, and have been a great while very intent upon) and to recommend the proceedings of the House of Commons, and the present ministry to the people. These are the persons pointed at in the title of his book, which he calls "England's Enemies Exposed, and its true Friends and Patriots defended." If he shew no better judgement in discovering who deserve to be called the enemies, who the friends of England, than in laying the charge of babling and non-sense, he will do as little service to England in helping her to make any useful discovery of her real friends and enemies, as he has done to his friends by his poor, his paltry, and palpable flatteries. The prince of darkness, when he goes up and down to do mischief, and destroy the kingdoms of the earth, as he turns himself into an angel of light, so has he emissaries *qui nigra in candida vertunt*, little hirelings, whose task is to "call evil good, and "good evil," to deceive with false colours, that he may be the better able to destroy. To give people a little taste of this panegyrist's impositions, and the judgement he has made of men, I will only take notice here, that he commends the fair character of Mr. J—n H—w, and calls him (who most certainly called the treaty made by the king a "felonious conspiracy") "a zealous \* patriot," and one "who will not exceed his duty;"

\* Page 45.



that he represents the Spee--er as a person deserving the “honourable character of an honest English gentleman, a champion for liberty, and a true patriot without disguise, collusion, or self-interest \*; that they whose long experience in publick affairs gave them knowledge of the methods employed by France in former reigns, to enslave Europe, are best able to prevent his designs in this†; that tearing up our constitution by the roots” is the work of the late ministry‡; that they “have betrayed the king, and carry on purposes destructive to the nation§;” that if we have a Porto-Carero in the nation, it is he “who has done his utmost to deliver us up to France, by investing the most christian king with a power to seize us;” that it is he (meaning L—d Hall—ax) to whom French Gold is given ||. Strange effrontery! Had Sir Bar—w Sh—er spoken this, I should not wonder at it; he, we know, when the lords were voted guilty of high crimes and misdemeanours for the treaty of partition, and an impeachment was ordered, did not blush to say openly in the house that the news of it would be very unwelcome at Versailles.

But to return from this digression to the matter in hand. Those who cannot deny that the subject has a right to petition, yet justify the proceedings against those who delivered the petition, because of its reproaching the honourable House, and prescribing rules to our legislators. The resolution of the House

\* P. 47, † P. 21. ‡ P. 18. § P. 23. || P. 13, 14.

of Commons concerning it was, that it was  
 “ scandalous, insolent, and seditious, tending  
 “ to destroy the constitution of parliament,  
 “ and to subvert the established government  
 “ of this realm.” Before I come to a particular examination of this resolution, I must crave leave to make this remark upon it, That this very censure, and the severe treatment of the petitioners, shew us plainly into what hands we are fallen. We remember very well when it was that Sir Edward Seymour, then a privy counsellor, and some others now in power, learned the trick of giving hard names to petitions. What I here hint at, I will endeavour to represent in the shortest view I can, because the matter will be pertinent to the subject I am treating of, and will give true Englishmen an opportunity of making some reflections which will be useful to us in the present circumstances of our affairs. We cannot forget what great concern the Commons of England above twenty years since shewed for the protestant religion; that their zeal to preserve it was seen in four parliaments, which were dissolved in a little more than the space of two years, by reason of their warmth in prosecuting popish conspirators, and labouring to exclude the Duke of York, whose succession to the crown raised the hopes of papists, and gave birth to all their plots,

The first was the long parliament, which consisted of members so devoted to the crown, that they would have gratified it in any demand whatsoever, had not the measures taken

to destroy Holland, the great friendship contracted with France by the mediation of the Duke of York, and the growth of popery soured their tempers, and given their inclinations quite another bias. After their prorogation on the 28th of December, 1678, which was soon followed by a dissolution, the next parliament, which begun at Westminster on the 6th of March, 1678-9, pursued the same measures to secure the religion and laws of England, and were for that reason prorogued on the 26th of May following.

The people of England alarmed at this, and growing into greater fears of the conspiracy which the parliament endeavoured to prevent, sent petitions to the king from several places, wherein they represented the grievances of the nation, and prayed for the sitting of the parliament to redress them. I shall take notice of the stile of one for all, viz. that of the city of London, wherein they set forth that there is “ a most damnable and hellish popish  
 “ PLOT BRANCHED FORTH INTO THE MOST  
 “ HORRID VILLANIES, against his majesty’s  
 “ most sacred person, the Protestant religion,  
 “ and the well established government of his  
 “ realm, for which several of the principal  
 “ conspirators stand impeached by parlia-  
 “ ment. Therefore in such a time when his  
 “ majesty’s royal person, as also the protes-  
 “ tant religion, and the government of the  
 “ nation are in most imminent danger, they  
 “ most humbly and earnestly pray that the  
 “ parliament, which is prorogued until the  
 “ 26th

“ 26th day of January, may then sit, to try  
 “ the offenders, and to redress all the most  
 “ important grievances, no otherwise to be  
 “ redressed.” This petition, which was a roll  
 of above an hundred yards in length, was  
 presented by Sir Gilbert Gerrard, and eight  
 other gentlemen of good note. They all failed  
 of the desired effect, for the parliament was  
 dissolved, and none other sat till October fol-  
 lowing.

The men now in power have not, it seems,  
 forgotten how they resented those petitions at  
 that time. Their measures then are the very  
 precedents which they copy after now. Tho’  
 it was then the subject’s right to petition, as I  
 have shewn it is now; though the petitioners  
 took care to keep within the bounds of the law,  
 yet a proclamation issued out on the 12th of  
 December, 1679, to prohibit such “ illegal  
 “ and tumultuous petitioning, as tending to  
 “ sedition and rebellion.” Besides, care was  
 taken to prevail upon their friends to procure  
 “ counter-addresses;” wherein the subscribers  
 expressed their “ abhorrence of petitioning.”

These measures that were taken to run  
 down this right of the subject, and to subvert  
 the constitution of parliament, together with  
 the displeasure conceived against some men of  
 great posts in the law, and figure in the civil  
 state, for acting illegally, and “ giving pernicious  
 “ cious counsel” (as the commons were  
 pleased to term it) “ to his majesty,” occasioned very warm votes and resolutions in the  
 next parliament, which, after many proroga-  
 tions,

tions,\* sat on the 21st of October, 1680, and continued sitting to the 10th day of January following.

Within six days after their meeting (viz. October 27) immediately after they had agreed upon an address to his majesty, wherein they expressed their “ resolution to pursue with a  
“ strict and impartial enquiry, the execrable  
“ popish plot,” they proceeded to votes about petitions. Then, as I observed before, it was

“ Resolved, *nemine contradicente*, that it is,  
“ and ever hath been, the undoubted right  
“ of the subjects of England, to petition the  
“ king for the calling and sitting of parlia-  
“ ments, and redressing grievances.

“ Resolved, that to traduce such petition-  
“ ing as a violation of duty, and to represent  
“ it to his majesty as tumultuous and sedi-  
“ tious, is to betray the liberty of the subject,  
“ and contributes to the design of subverting  
“ the ancient legal constitutions of this king-  
“ dom, and introducing A R B I T R A R Y  
“ P O W E R.

“ Ordered, that a committee be appointed  
“ to enquire of all such persons as have of-  
“ fended against these rights of the sub-  
“ jects.”

\* The former parliament being dissolved, writs were issued forth for another to sit at Westminster the 17th Day of December, 1679, from thence prorogued to the 26th of January, from thence to the 15th of April, thence to the 17th of May, thence to the 1st of July, thence to the 22d of the same, thence to the 23d of August, thence to the 21st of October.

The next day (October 28) Sir Francis Wythens, as I observed before, being found guilty in this particular, they voted him “a betrayer of the undoubted rights of the subjects of England,” and ordered him to be expelled the house. The city of London having petitioned the House against Sir George Jefferys, their recorder, and it being referred to a committee, they passed this vote on the 13th of November following :

“Resolved, that this committee is of opinion, that by the evidence given to this committee, it does appear, that Sir George Jefferys, recorder of the city of London, by traducing and obstructing petitioning for the sitting of this parliament, hath betrayed the rights of the subject.” To which the House agreed, and it was ordered, “that an humble address be made to his majesty to remove him out of all public offices.” They further ordered likewise, that the committee should enquire into all such persons as had been advising or promoting of the late proclamation, styled, “a proclamation against tumultuous petitioning.” The grand juries of the counties of Somerset and Devon having expressed their detestation of such petitioning, the House, on the 19th of November, ordered that the two foremen of the said juries, and two others, should be sent for in custody of the serjeant at arms, to answer for breach of privilege (as they called this abhorrence of petitioning) by them committed against the House. The next day they voted that one  
Thomas

Thomas Herbert, Esq; should be sent for in custody, for prosecuting John Arnold, Esq; at the council table, for “promoting a petition, and procuring subscriptions.” To them they added two others upon the same account, whom they called “betrayers of the liberties of the subject.”

On Wednesday the 5th of January, the Commons ordered an impeachment against Sir Francis North, Chief Justice of the Common Pleas; Sir William Scroggs, Chief Justice of the King’s Bench; Sir Thomas Jones, one of the Justices of the same Bench, and Sir Richard Weston, one of the Barons of the Exchequer. Sir Francis North’s crime was, that he (as appeared by the confession of the attorney general before the House, on Wednesday the 24th of November) was “advising  
“and assisting in drawing up and passing  
“the proclamations against tumultuous petitions.” Against Sir William Scroggs, and Sir Thomas Jones, there were a great many complaints, which occasioned many resolutions of the House and votes against them. One of the great complaints was, that when the grand jury which served for the hundred of Ossoliton, in the county of Middlesex, attended the King’s Bench with a petition, which they desired the court to present in their name to his majesty, for the sitting of that parliament, the chief justice said he would dispatch them presently; that they took it ill to have a petition offered to alter the king’s mind contrary to his proclamation; that

when there were several presentments against Papists \* and other offenders, they discharged the grand jury four days before the end of the term, which was never done before. This act they voted “arbitrary, illegal, and a high “misdemeanor,” several days † before this impeachment was ordered. One of Mr. Baron Weston’s great crimes was, that, in an extraordinary kind of charge given the assizes before at Kingston (in the county of Surry) he inveighed very much against Farel, Luther, Calvin, and Zuinglius, condemning them as authors of the reformation; which was against their princes minds, and then adding to this purpose, ‡ “Zuinglius set up his fanaticisms, “and Calvin built on that blessed foundation: “and to speak the truth, all his disciples are “seasoned with such a sharpness of spirit, “that it much concerns magistrates to keep a “strenuous hand over them; and now they are “restless, amusing us with fears, AND NO- “THING WILL SERVE THEM BUT A PAR- “LIAMENT. For my part, I know no re- “presentative of the nation but the king; || “all power centres in him. It is true, he does “intrust it with his ministers, but he is the

\* Among which there was a bill against the Duke of York for not coming to church.

† 22d of November.

‡ We see the grand artifice then was, to represent all who would not do what the courtiers then would have them, as fanatics.

|| Nor did any of his kidney know any other in those days; but now, the king being changed, all power is made to centre in the House of Commons.



“ sole representative; and i’faith he has wisdom enough to intrust it no more in these men, who have given us such late examples of their wisdom and faithfulness.” These words (which were witnessed by several persons, some of whom put them immediately in writing) made the committee before whom they were proved come to this resolution, “ that the said expressions in the charge given by the said Baron Weston, were a scandal to the reformation, in derogation of the rights and privileges of parliaments, and tending to raise discord between his majesty and his subjects.”

Two days after that the Commons agreed \* upon impeaching these great men of the law, (who every one came under the public censure for appearing abhorrrers of petitioning for the sitting of the parliament) they fell into other votes, which shewed what it was they wanted a parliament for. Upon a message sent to them from his majesty, they came to these several resolutions following :

“ Resolved, that it is the opinion of this House, that there is no security or safety for the protestant religion, the king’s life, or the well constituted and established government of this kingdom, without passing a bill for disabling James Duke of York to inherit the imperial crown of England and Ireland, and the dominions and territories thereunto belonging: And to rely upon

\* Viz. January the 7th.

“ any other means or remedies without such  
 “ a bill, is not only insufficient but dan-  
 “ gerous.

“ \* Resolved, that his majesty in his last  
 “ message having assured this House of his  
 “ readiness to concur in all other means for  
 “ the preservation of the protestant religion,  
 “ this House doth declare, that until a bill be  
 “ likewise passed for excluding the Duke of  
 “ York, this House cannot give any supply  
 “ to his majesty, without danger to his ma-  
 “ jesty’s person, extreme hazard of the pro-  
 “ testant religion, and unfaithfulness to those  
 “ by whom this House is trusted.

“ Resolved, that all persons who advised  
 “ his majesty in his last message to this House,  
 “ to insist upon an opinion against the bill for  
 “ excluding the Duke of York, have given  
 “ pernicious counsel to his majesty, and ARE

\* For the better understanding of this place, we are to take notice, that his majesty, in a speech which he made on the 15th of December, promised them (as he takes notice he had done before) to concur with them in any remedies for securing the protestant religion, which might consist with preserving the succession in its due and legal course of descent. The Commons, in a long answer to this speech on the 18th of December, tell him, that no interruption of that descent has been endeavoured by them, except only the descent upon the person of the Duke of York, who, by the wicked instruments of the church of Rome, has been manifestly perverted to their religion; that his succession is utterly inconsistent with the safety of his majesty’s person, the preservation of the protestant religion, and the property, peace, and welfare of his protestant subjects. On the 4th of January he sent them another message, wherein he tells them that he is sorry to see their thoughts so wholly fixed upon the bill of exclusion; that he is confirmed in his opinion against that bill, &c. This occasioned the resolutions of the 7th of January, set down here.

“ PROMOTERS OF POPERY, AND ENEMIES  
 “ TO THE KING AND KINGDOM.”

After these general resolutions, they ran into severe votes and resolutions against George E. of Hal—ax, Henry M—q—s of Wor—er, Henry E. of Cla—on, Law—ce H—de, Esq; Lewis E. of Fev—m. A motion was also made for an address to his majesty, to remove Edward Sey—r, Esq; from his majesty’s council and presence; but it was adjourned to the Monday following, which was the day on which the parliament was prorogued. The reason perhaps why they did not press this motion, was because they had agreed upon articles of impeachment against him, upon other scores, just twenty days before.

Their warm proceedings, and their insisting upon that particular method to secure the protestant religion, occasioned not only the prorogation of this parliament on the 10th of January, but of the following parliament likewise at Oxford, which met the 21st of March, and was dismissed on the 28th, as soon as they read the bill of exclusion brought in there. On the 10th of January the House of Commons, knowing that they were to be prorogued, before the prorogation came to several resolutions, two of which I shall here take notice of.

I. “ Resolved, that whosoever advised his  
 “ majesty to prorogue this parliament to any  
 “ other purpose than in order to the passing  
 “ of a bill for the exclusion of James Duke of  
 “ York,

“ York, is a betrayer to the king, the protestant religion, and of the kingdom of England ; A PROMOTER OF THE FRENCH INTEREST, AND A PENSIONER TO FRANCE.”

2. “ Resolved, that the thanks of this House be given to the CITY OF LONDON, for their manifest loyalty to the king, their care, charge, and vigilancy for the preservation of his majesty’s person, and of the protestant religion.” This care and concern which the city of London shewed for the protestant religion, in that time of imminent danger, appeared in many instances, and in two particularly, which the House thought did then deserve a grateful acknowledgement ; first, in petitioning the king for the sitting of that parliament ; secondly, in voting an address to his majesty to declare their loyalty ; and to petition him that the parliament might sit until protestantism was secured.

Having given this account of the proceedings both of the courtiers and House of Commons, the one to run down, the other to assert the subject’s right of petitioning in those days, I must crave leave to take notice of what passed afterwards, because it will be of use to us in the matter I am now treating of.

After the dissolution of the Oxford parliament, the king published a declaration, wherein he vouchsafed “ to declare the causes and reasons of his actions to his people.” It might very well be imagined, that after the people had so universally petitioned for a sitting

ting of the last parliament at Westminster, to secure their religion and liberties, which the conspirators were now attacking with the utmost vigour, they would be more than a little alarmed to see that and the succeeding parliament at Oxford so soon dissolved, and that denied them which they thought the only security for their religion. He begins therefore with telling them, that it was “with exceeding great trouble, that he was brought to dissolve the two last parliaments.” It were well that those who in their votes concerning the Kentish petition, shewed that they have not forgotten the spirit of the courtiers at that time, as to their abhorrence of petitioning, had remembered their other resentments, expressed in this declaration, as the reasons for dissolving that parliament.

One complaint is, that the “Commons made arbitrary illegal orders, for taking persons into custody for matters that had no relation to privilege of parliament.” Was it at that time arbitrary and illegal to take those degenerate wretches into custody, who published, under their hands, abhorrences of parliaments; and of those who in humble and lawful manner petitioned for their sitting in a time of such extreme necessity? And is it not now so to imprison and confine men for doing their duty to their king and country, no otherwise than the law prescribes? Is it a greater breach of privilege to shew a letter written by Sir Ed—d Se——r, than, in compliance

pliance, with a strange arbitrary illegal proclamation, to run down the subject's right of petitioning; and thus, in effect, to strike at parliaments themselves, and endeavour to wound the constitution? What would Mr. Bo—n have said to this? Surely he must have blushed to see his old friends, whose interest he then served, in running down the Commons' power of \* imprisoning, exercise such acts of power as were never heard of in England before. Tom Sheridon, who laboured in the same cause, and wrote against that power of the Commons, which he felt in his own person, with as much warmth as it was possible for Bo—n to do, did he see these things, would be able perhaps to behold them with little astonishment. He knew the frailty of human nature, and carried much of it about in his own body; for after he had taken a great deal of pains (as all the royal scribes of those times and his religion did) in decrying fanaticism and republican principles; in crying up episcopacy and the church of England, and rescuing the minds of men from those groundless fears of popery, which were running them into measures pernicious to the duke his master's interest; he saw, poor man, popery rampant, and a popish king in England; he saw the bishops, and (which he could not but wonder at) was glad to see them, in the Tower; and, which must be the greatest wonder of all to such a zealous churchman as

\* Reflections on a pamphlet titled, “A just and modest vindication of the two last parliaments, p. 56, 57, &c.

he was, he saw himself a papist. It would therefore be now the less surprising to him, to see his old loyal friends turned downright republicans, and as violent in the House of Commons for illegal and arbitrary imprisoning, as they were against that, and all other power in the Commons.

“ Another complaint in the declaration, and a reason given for dissolving those parliaments, is their “ strange illegal votes, declaring divers  
 “ eminent persons to be enemies to the king  
 “ and kingdom, and desiring to have them  
 “ removed from the king’s council and presence, without any order or process of law,  
 “ any hearing of their defence, or any proof  
 “ so much as offered against them.” The persons here pointed at in the declaration are very well known, so is the crime for which they are declared “ enemies to the king and  
 “ kingdom.” Time has shewn whether those parliaments had reason to express their resentments against those men who adhered to the Duke of York’s interest. Had they been less warm for him, they had, perhaps, been kinder to their religion and country. It is certain that extraordinary artifices were made use of to support his interest. Such I may call this very declaration, which, though it was reckoned for very good \* reasons, to be con-

\* The declaration was not communicated to the privy council till the 8th of April; but Monsr. Barillon, the French ambassador, read it to a gentleman the 5th of April, and advised with him about it. The gallicisms speak it to be French, for it introduces the king saying, “ It was a matter extremely sensi-

trived by a great French minister, though it came not out under the great seal, and was only subscribed by Francis Gwyn, the clerk of the council, yet was read publicly in the churches. Such I may reckon the addresses contrived and sent up by men of the same leven with the former abhorrers: wherein some “\* ascribe it to his majesty’s wisdom “ and sovereign authority,” that we are not relapsing “ into the miseries and confusions “ of tyranny and usurpation, by the subtil artifice and cunning contrivance of the old “ ENEMIES OF THE MONARCHY † AND “ THE CHURCH.” Others, “ ‡ that it is the “ kingdom’s interest to continue the succession in its due and right line;” and take upon them to thank his majesty “ || for his unalterable resolutions to preserve the crown “ in its due and legal course of descent; and “ undertake to sacrifice their lives to preserve “ the king’s heirs and lawful successors:” And “ § offer their lives and fortunes to his “ majesty’s disposal for this purpose.” It must be

“ ble to us,” a form of speech peculiar to the French. Besides, the Ducheſs of Mazarine published the dissolution at St. James’s several hours before it was done. Vid. Just and modest Vindication, of the Proceedings of the two last Parliaments.

\* Address from Rye, in Suffolk.

† This was the old cant to draw in the church party to their side, to make them believe there were evil designs against the monarchy and the church. That they may keep up a title to the useful cant, they themselves increase the number of those enemies.

‡ Address from the county of Somerset.

|| Address from Cambridge, Rippon, western division of Suffex.

§ Address from Hereford. Address from Monmouth.

astonish-



astounding as well as surprising in those days, that when petitions had been not only discountenanced, but forbidden by proclamations, addresses should so soon after be encouraged and promoted; especially when we consider that the petitions were in reference to matters which every body understood, and in relation to things wherein the law justified the petitioners: whereas addresses respected matters which very few understood, and which the law no way authorises private men to meddle with, and which none, save a parliament, have power to decide or determine. If change of parties in St. Stephen's chapel make it not astonishing to us now to see a House of Commons treat gentlemen so severely as this has done for presenting a legal petition, when another House has called others to account for expressing their abhorrence of petitioning; yet it must seem a little strange, to see those who promoted addresses to the king to secure the interest of a popish succession, imprison so many gentlemen of worth and note in their country, for addressing them, and praying, in the most difficult times we ever fell into, that our religion and safety may effectually be provided for, and that a king, who under God has preserved the protestant religion, "may be enabled to assist his allies," and consequently preserve our religion and liberties. But if nothing of this be strange, is it not a little amazing to compare some men's proceedings against others, with those remonstrances to the nation, published

lished in the houses of God, where they complain of eminent persons being “voted enemies to the king and kingdom,” and addressed against to have them “removed from the king’s council and presence, without any order or process of law, any hearing of their defence?” Were such votes and addresses greater hardships in the reign of a king who made it his rule to heap favours on those who were under the displeasure of the House of Commons, than they are under a Prince, whom the Commons reckon obliged in a manner to comply with them in all their desires?

From what I have said it appears when, and upon what account the subjects right of petitioning was run down. As the petitions offered by the people were for the sitting of the parliament, and that, to have their religion and liberty secured in a time of great and manifest danger: so were the abhorrences of those petitions set a-foot, four parliament’s dissolved, the king’s declaration containing the reason of it published in churches, and the thanksgiving addresses to his majesty afterwards procured to defeat the measures then taken for the preservation of our religion, and to secure the Duke of York’s peaceable succession to the crown. If there be any who consider, that those who have a concern for the protestant religion, must apprehend at least as much evil from King James or his family’s returning now, as from his succession at that time, and that as it is of as great importance to the affairs of  
France

France to have him on the throne, or confusion in England, as then it was; so Count Ta—rd must be as industrious in taking measures to serve his master, as Mr. Bar——on was in those days: it must be a very melancholy reflection to them, to think how differing the temper of the Commons of England now is from what it was then: and to see the power in their hands, who were in all those court-measures, which, I am afraid, have not yet had their worst effects.

Good-natured people, who are as far from being suspicious of others, as they are from evil designs themselves, do, I know, judge those men too severe in their censures, who think that in the treatment of the Kentish petitioners there were the same regards and designs that were formerly in their abhorrences and addresses: or that this was done to gratify Count Ta——rd, and, by striking a terror, to prevent the people from running universally into petitions and addresses, and conjuring up a spirit in the nation which might be very prejudicial to his master's affairs. It is true, indeed, they do and must own, that it is hard to account for the severity of their proceedings: that when the law has, in express words, provided, that people may petition the parliament, they should place such an affront on the county of Kent (I should say the whole kingdom of England) as to imprison their delegates after the manner they did. If every part of the petition was not so nicely worded as they would have it, would it not be sufficient

ficient to reprove them for it? Would no less punishment than imprisonment do? If any of their own members be at any time taxed for speaking amiss, they are suffered to explain themselves; why should not they allow others to do the same? If there was any thing in the petition which the house thought a reflection, one of the gentlemen told Sir The——us Ogl——rp, they would declare at the bar of the House, that it was what they did not design, and would ask pardon for it; but nothing would serve that plenipotentiary's turn, but to have them declare that they were sorry for presenting the petition, which they never would do. That which gave offence was, calling their Addressees Loyal: if they were loyal, it could be no reflection to call them so; if they were not, they had reason, I confess, to think it a jeer, and at the same time they ought to confess that it was what they deserved. It is most certain, that the design of the gentlemen who signed that petition, was to serve their country by it, which they did effectually: the methods then that they made use of, must be such as they thought properest for that end, wherefore the goodness and sincerity of their intentions must silence every thing that can be said against their way of expressing themselves. The censure of the Commons is very severe: they tell us, the petition “is scandalous, insolent, “feditious, tending to destroy the constitution “of parliament, and subvert the established “government of this realm.” By the harshness

ness of the expressions, a man would think that this petition were an address to a king, or a remonstrance that charged him with a "felonious conspiracy," or making a "treaty in its own nature unjust." How can it be scandalous or insolent for so considerable a branch of the English nation to present an humble petition to their delegates, and pray their attornies, (as members were formerly called) to take care of the business they intrusted them with? How can it be seditious to shew an extraordinary and unparalleled zeal for the king, to pray that he may be enabled to "assist his allies, and that God may long continue his propitious and unblemished reign over us?" How can it "tend to destroy the constitution of parliament, and subvert the established government of this realm," to pray to have those things done, which are absolutely necessary to prevent our falling into the hands of those enemies who will certainly destroy the "constitution of parliament, and subvert the established government of this realm." The last Westminster parliament, in the reign of King Charles II. Resolved \*, "Nemine contradicente, (as I observed before) that to traduce petitioning as a violation of duty, and to represent it to his Majesty as tumultuous and seditious, is to betray the liberty of the subject, and contributes to the design of subverting the ancient legal constitution of this kingdom, and introducing arbitrary power."

\* 27th of October, 1680.

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This

This parliament resolves, that the Kentish petition tends “to destroy the constitution of  
 “parliaments, and to subvert the established  
 “government of this realm.” It is very strange that to traduce petitioning, and to petition, should both tend to subvert the constitution. If it be the undoubted right of the subject to petition, it will be very easy to determine which of the two resolutions is rightest; and if we compare the former inclinations of a party with their late proceedings, it will be evident to us, how the last resolution happens to be wrong. But it is said that there is something particular in the petition, which justifies this resolution; the petition directs the House of Commons, and tells them what they shall do; this, they say, is insolent, and  
 “tends to destroy the constitution of parliament, and to subvert the established government of this realm.” Very strange! Can any man or body of men offer a petition to others, that is not liable to the same censure? Does not their petitioning plainly say, that they think themselves aggrieved? Does not their prayer direct those to whom they address, what they are to do? But how this petition of the grand jury, justices of peace, and freeholders of the county of Kent, can be said to “tend to destroy the constitution  
 “of parliament, and to subvert the established  
 “government of this realm,” is to me very difficult to conceive. Had this indeed, which is an humble petition, carried authority and power in it; had they pretended to a right to  
 command

command the House of Commons to do what they would have them, I cannot see how even such an assuming address as this could bring our constitution into any great hazard. Should the whole freeholders of the county of Kent join unanimously in such an address, yet would the power and authority of the representatives of the freemen of England, and the constitution of parliament, rest very secure in the judgment of the rest of the people, who would never justify such an usurped authority. An usurped authority I call it, and must subscribe to that, as what I take to be very moderate and just, which Colonel Algernon Sidney says in that discourse which cost him his life;\* “ I believe, says he, that the powers of  
 “ every county, city, and borough of Eng-  
 “ land, are regulated by the general law to  
 “ which they have all consented, and by  
 “ which they are all made members of one  
 “ political body. Among us every county  
 “ does not make a distinct body, having in it-  
 “ self a sovereign power, but is a member of  
 “ that great body which comprehends the  
 “ whole nation. It is not therefore for KENT  
 “ or SUSSEX, LEWIS or MAIDSTONE, but  
 “ for the whole nation that the members  
 “ chosen in those places are sent to serve in  
 “ parliament: and though it be fit for them  
 “ as friends and neighbours (so far as may be)  
 “ to hearken to the opinions of the electors  
 “ for the information of their judgements,

\* *Discourses concerning Government*, sect. 44, p. 457.

“ and to the end that what they shall say may  
 “ be of more weight, when every one is  
 “ known to speak his own thoughts only, but  
 “ those of a great number of men; yet they are  
 “ not strictly and properly obliged to give an  
 “ account of their actions to any, unless the  
 “ whole body of the nation for which they  
 “ serve, and who are equally concerned in  
 “ their resolutions, could be assembled. This  
 “ being impracticable, the only punishment  
 “ to which they are subject, if they betray  
 “ their trust, is SCORN, INFAMY, HATRED,  
 “ AND AN ASSURANCE OF BEING REJECT-  
 “ ED WHEN THEY SHALL AGAIN SEEK THE  
 “ SAME HONOUR.” But though a part of the  
 Freeholders of England cannot impose their  
 commands on the representatives of the whole,  
 yet may they represent any private or public  
 grievance; nor can I see how the doing this  
 can tend to destroy the constitution of parlia-  
 ment. The meaning of those who tell us that  
 it does, must be this, that some people’s com-  
 plaining in behalf of the publick, may proba-  
 bly influence others, and thus occasion peti-  
 tions from all parts of the kingdom. What if  
 it should do so? What if far the greater part  
 of the freemen and freeholders of England  
 should send petitions, and represent publick  
 grievances; how can this tend to destroy the  
 constitution of parliament? If there be any  
 law which forbids the people to address (or  
 give any instructions to their delegates, the  
 doing so must be owned to be against law;  
 but it is not a trespass, which (to speak in the  
 phrase



phrafe of a certain patriot) can “ pull up our “ constitution by the roots.” But we are told, that by the constitution of our parliament, the members are left to the freedom of their own debates, and are to act without controul; they, therefore, who take upon them to intermeddle in their business, invade that freedom, and consequently our constitution. They who tell us that the representatives of the freemen of England have such a freedom as this, and are to act without controul, cannot sure mean that they have delegated the whole power to them; so that it is free for them to do whatever they please, without any regard to the inclinations or interest of those who employ them. It is not to be supposed that the who takes what servant he pleases, is obliged to suffer him to do what he pleases. The knights, citizens, and burgeses, sent by the people of England to serve in parliament, have a trust reposed in them, which if they should manifestly betray the people, in whom the power is more perfectly and fully than in their delegates, must have a right to help and preserve themselves. Were not this so, the condition of those who act by delegates, would be worse, and their freedom less than that of other states; which I think is not so in the reckoning of mankind. The Achaians, Eto-lians, Latins, Samnites, and Tuscans, formerly did, as now the united provinces of the Netherlands, the Switfers and Grifons do, transact allthings relating to their associations by delegates; the Athenians, Carthaginians, and Ro-

mans

mans kept, as the Venetians, Genoefes, and Lucchefes do now, the power in their own hands. Thefe all, as the above-named honourable author \* obferves, were and are equally free. But it would, I think, be very improper to reckon them fo, unlefs we fupposed that the power committed to their trustees remained ftill in them. That the power arifes and is fixed here, and that the delegates reckon themfelves obliged to follow the directions of thofe who chufe them, is evident from the practice of other countries, whole governments had the fame origin with that of England. The deputies or procuradores of the feveral parts of Caftile did in the Cortez held at Madrid, in the beginning of Charles the Fifth's reign, excufe themfelves from giving the fupplies he defired, becaufe they had receives no orders † in that particular from the towns that fent them; and afterwards receiving exprefs orders not to do it, they gave his majefty a flat denial. The like was frequently done during the reigns of that great prince, and of his fon Philip the Second. The fame way was taken in France, as long as there were any general afsemblies of eftates; and if it do not ftill continue, it is becaufe there are none. For no man who underftood the affairs of that kingdom, did ever deny, that the deputies were obliged to follow the orders of thofe who fent them. In the general afsembly of eftates held at Blois,

\* *Sidney of Government*, p. 451. † *Vida de Carlos 5º de Sandoval*.

in the time of Henry the Third, Bodin then Deputy \* for the third estate of Vermandois, by their particular order, proposed so many things as took up a good part of their time. Other deputies alledged no other reason for many things said and done by them, than that they were commanded so to do by their superiors. These general assemblies being laid aside, the same custom is still used in the lesser assemblies of estates in Languedoc and Brittany. The deputies cannot, without the infamy of betraying their trust and fear of punishment, recede from the orders given by their principals. The same method is every day practised in the Diets of Germany: the princes and great lords, who have their places in their own rights, may do what they please; but the deputies of the cities must follow such orders as they receive. The histories of Denmark, Sweden, Poland, and Bohemia, testify the same things.

This appears to have been the constitution of England. “ Formerly, says my lord Coke †, “ in the writs to the sheriffs for the election of “ Commons, the king signified that by the “ advice of his council he called them together about some weighty affairs, that concerned himself, the state and defence of his “ kingdom of England, and the holy church, “ and required them to chuse such men as “ would promote those affairs; that for want “ of such a power, and by an improvident

\* *Hist. Thuan.*

† *2d. Instit. fol. 9, 10.*

“ election,

“ election, the aforefaid business must not be  
 “ left undone.” The business that required  
 their meeting was published in the writs, that  
 the Commons and Freemen might consider  
 what they thought convenient to have done,  
 and that they might chuse proper delegates,  
 and direct them as they thought fit. This I  
 take to be the reason why “ it was always  
 “ the custom at the meeting to declare the  
 “ cause of parliament, which in antient time,  
 “ (says \* he) was shewn in the chamber de  
 “ peint, or St. Edward’s chamber:” That  
 the person elected being more fully informed  
 of the business to be transacted by them, might  
 be able to give their respective countries time-  
 ly information of it, in order to receive their  
 directions therein. In this opinion we may  
 be confirmed by what that great sage of the  
 law tells us in another place. “ When any  
 “ new device is proposed on the king’s be-  
 “ half, (says † he,) the Commons may an-  
 “ swer, That tendered the king’s estate, and  
 “ they are ready to aid the same, only in this  
 “ new device they dare not agree without  
 “ conference with their countries.”

Since then in our constitution the delegates  
 of the people have reckoned that they had a  
 trust reposed in them by those whom they re-  
 presented, and that they were obliged to make  
 their will the rule of their actions; it will be  
 very hard to conceive how it can tend to de-  
 stroy this “ constitution, to pray them to have

\* 2d *Instit.* fol. 8.

† 2d *Instit.* fol. 14.

“ a regard to the voice of the people.” If they faithfully discharge the trust reposed in them by the country, it will be impossible at any time to procure a petition signed by such a number of gentlemen as those of the county of Kent, which may any way seem to arraign their proceedings ; but if their management bring them under the suspicion of the nation, the people, who have a right to preserve themselves, must be allowed a liberty, to let them know, in civil and respectful terms, what is the voice of the people, and what they think the necessities of the publick. In such a case, it is impossible for all to represent the publick grievances together ; some therefore must begin, and they who address first, when there is a good reason for it, deserve the thanks of the whole. It was impossible that such a considerable body of gentlemen as the Kentish petitioners should conspire together to affront the House of Commons ; they knew what they did was done in the eyes and face of the nation, that such an act of folly and madness must bring them into the lowest degree of contempt with the people of England. They thought therefore what they did was a duty which they owed their country in that great and nice juncture : whether it was so or no, will appear from

The third and last member of this discourse, which is to shew what reasons those gentlemen had to petition.

It was notorious to them, and all the world, that our affairs were at that time in a very  
M dangerous

dangerous and melancholy posture. They knew that France has a long time aimed at the universal monarchy : that as she has maxims in her government which are very well calculated for such great designs, so by her carrying on a ten years war against the powerful states confederated against her, they saw that she has force to support her in those enterprizes. If her power was formidable when she marched out only in her own strength, it must be very terrible to see her strengthened with the union of no less a power, than that which two ages before grasped likewise at the empire of the universe. It is true, indeed, those dominions were not bequeathed to her ; but being given to one of the house of Bourbon, who must live under the guardianship, be protected by the power, and governed by the councils of France, she must necessarily and of course have the same command over their wealth and force, that she had over her own. This was an early effect of the Spaniards' will ; for though in the beginning the French party among us endeavoured to make us believe, that France would be in no better condition than it was before, because the Duke of Anjou would forget his father's house, and be governed only by Spanish councils ; yet the contrary was evident at the time those gentlemen delivered that petition. They saw that the Milanese was delivered up to her ; that the strong holds of the Spanish Netherlands, which we have a long time reckoned the bulwark of England, and have

have spent vast treasure and blood to keep them out of her hands, were all in the possession of her troops; and not only so, but that the administration of all the affairs of Spain were given up to her. Besides this, they saw how great a breach has been made in the protestant religion since the beginning of the last age; that the kingdom of Bohemia, which was almost wholly protestant, is now entirely popish; that in Poland, Austria, and Moravia, the protestants, who were a moiety of the people, are utterly destroyed; that their destruction is almost compleated in Hungary; that the Newburgers, from zealous protestants, are turned deadly enemies of the protestant religion; that the Palatinates are wasted with persecution, and the Saxons their neighbours are so far from being able to succour them, that they are in danger from their own prince; that in France, where they were powerful enough to carry on several great civil wars; and in Piedmont, where their numbers were much greater in proportion to the countries; and in Flanders, Bavaria, Bamburgh, Cologne, Wartzburg, and Worms, where they were very numerous, their religion is totally extinguished. All this was a very melancholy view; and that which made it more so, was to consider that France (which out of regard to her own interest, the greatest and indeed only obligation in the world to her, was obliged by all means possible to destroy the northern heresy, she having made this the foundation on which she built her

hopes of universal monarchy) was now in a new friendship and alliance with the fiercest zealots of the church of Rome, the Spanish clergy, men whom it was her business to gratify, and whom she could not gratify more than by contriving severer methods to torture and destroy hereticks.

In such a juncture as this, it was easy for a very weak capacity to see what it imported England to do in order to secure her own and Europe's liberties, and to prevent the utter extirpation of the protestant religion both at home and abroad. It was evident that France which had made such advances already, wanted nothing to make sure of the universal monarchy, but only to confirm herself in the dominions of Spain; and as evident it was that every day she continued unmolested in her new acquisitions, her strength must grow prodigiously, so that in a little time it must be insupportable. In that case she had leisure and opportunity to settle her new dominions, to discover the weakneses of the fortresses, as well as policy, and to repair both; to learn the temper of the several provinces, and to consider how they might be secured, and by what governors; to make the best provision that was possible for defending Milan; and (which has been a long time one of the high reaches of her ambition) to get into a quiet possession of all the strong holds in Flanders. Besides this, there was another inestimable benefit which she reaped by the quiet that was indulged her. Whilst those who a long time checked



checked her growing greatness, patiently endured this new union of power, what could the other nations of the world think, but that this unconcernedness proceeded either from an inward satisfaction that France had acquired such power, or a despair of breaking it, and restoring the balance again? The natural consequence of either reflection must be to resolve that it was their interest to submit, and indeed to make their court to a power which was likely to meet with no opposition. It was this that made the Spaniards, and the people of their provinces, tamely suffer one of the house of Bourbon, which they hated, to take possession of their dominions: it was this made other states enter into neutralities and alliances, which they would have refused, had not the quiet and peaceable conduct of others governed their inclinations. Having once fixed their resolutions, it is to be feared we shall find them adhere too obstinately to what they have engaged to France, and resolved with themselves. If honour be not sufficient to influence them, and keep them steady to the side they have chosen, even interest may help to do it now; for the notions of that alter, when men have new modelled their thoughts, and let their heads run upon other schemes.

In that great juncture, when the season was for making the earliest and best provision for securing the liberties of Europe, the eyes of the world were all fixed upon England. It was she who had always kept the balance; and she

the only having it now in her power to determine whether it should be preserved or no, other nations were to observe her motions, and take their measures from her. None could doubt but that if she had entered betimes into a firm league with the emperor and Holland, it would have presently produced a confederacy strong enough to humble France, which was grasping at things much beyond the reach of her power, in that feeble and weak condition she was reduced to by a long war and evil conduct. It was therefore undoubtedly the business of English ministers to advise the calling of a parliament immediately upon the news of the Spaniard's death, and of the parliament to address the king to make alliances. Had this been done, Portugal would have thought it her interest rather to enter into alliances with them, than make herself a party in establishing the throne of the Duke of Anjou, who, when he is established and made one with France, will certainly set up his title to Portugal. The Duke of Savoy then would have considered that it was by means of the equilibrium between the House of Austria and France that his ancestors preserved their dominions; he would have considered likewise whether it was worth his while to make his sons beggars, or soldiers of fortune, for the sake of aggrandizing his daughter. This will be the acquisition of his battles if they be successful; for when the Milanese and both the Sicilies are in the hands of France, his dominions will be

be necessary to her for communication. The pope then probably would have reflected on the affair of the Corsi, the extension of the Regale, the four propositions that were advanced at Paris, and all the enormous attempts against the dignity of the head of the church in the person of Pope Innocent XI. and would perhaps have declared for the emperor, had he had such encouragement to do it. Nor is it improbable that the republic of Venice would do the same, she could hardly avoid considering betimes, that the neighbourhood of France proved so fatal to her in the small number of years that Lewis XII. enjoyed Milan, that he reduced her to greater extremities than any other war, even that of the Turks, ever did. A consideration so powerful with that wise republic, that though the vast power of the House of Austria under the Emperor Charles V. might have given her just grounds of jealousy, she would never lend her ear to any proposition of Francis I. successor to Lewis XII. Had things been upon a right foot in England, it is very probable that the Duke of Bavaria, and his brother the Archbishop of Cologne, would have remembered the obligations laid upon them, at least their own interest; and that the former would have taken measures which would make the war much easier than it will be. In that case the people of Spain, and their provinces, would, if they did no more, keep up their old resentments against France, which in a convenient season, would render them very  
useful

useful to the confederates. The Germans would consider what danger they were in of having a prince, grown so great by the accession of the Spanish dominions, carry his arms into Germany, where he has great footing already, and challenge all the states that compose that great nation as part of the succession of Charlemaign, of which he and other kings of France have already declared themselves heirs. In this case some (as the chapter of Cologn seems very lately to have done) would consider that in an hereditary empire, there would be no more colleges, nor diets, nor chapters: others, that it is a vain thing to dispute about prerogatives, and to make France judge of the dispute, whose arbitration must turn to the ruin of the empire. And the result of these reflections would be to enter into measures agreeable to them.

These probably had been the resolutions of those foreign states, at least of some of them; had not the management of England discouraged them to that degree, that they must arraign themselves of rashness and folly, if they had taken those measures which they themselves knew were most for their interest.

Things being in this state, it is very plain that the gentlemen of Kent had a great deal of reason to pray the House of Commons to have a regard "to the voice of the people," that our religion and safety might be effectually provided for," and that his majesty by "supplies" might be "enabled to assist his allies." The "voice of the people" was then

then every where loud for war, there was scarce any so weak as that they could not see that no provision could be made for our religion or safety without it. It was manifest that France, after she had been a while settled in her new dominions, would be able to overcome Holland whenever she pleased. Holland being over-run, it was easy to see that England, being spoiled of her trade by that revolution, and the union of the two great kingdoms, must soon follow her fate. The French party, indeed, told us, and (which among other things occasioned some reflections) the “H—se of Com—s, seemed to some to be of their opinion, that our security might be sufficiently provided for by a good fleet. It was a very fond opinion to imagine that we, who, in conjunction with Holland, were the last war insulted upon our own coasts by the fleet of France; and another time had probably been ruined by them, had not the heavens been favourable to us, should be able, after the loss both of our trade and the assistance of the Dutch, to maintain a fleet big enough to secure us from a power so exorbitant as that of France would then be. A powerful fleet are words that sound plausibly in the mouths of those people, who are for having our arms to be as little grievous as may be to France, and they serve to amuse and impose upon weak people; but men of understanding must allow this to be a very uncertain security. This was the only provision for our safety, which the parliament for a

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long

long time seemed inclined to allow us. Whatever matter was offered that seemed to have the least tendency to a war, was violently opposed by the Sp——er, Mu——ve, Sey——r, Sho——r, Fi——ch, H——w, Ha——rt, and all those who were entirely in the interest of that party. This aversion they plainly discovered in the beginning of the session, when on the 14th of February, immediately after the king had made his speech, they came to the resolution, “ To stand by and support his majesty’s government, and take such effectual measures as may best conduce to the interest and safety of England, the preservation of the protestant religion, AND THE PEACE OF EUROPE.” We cannot but remember what debates arose upon this last clause, and with what difficulty it was carried by 181 against 163, and that the reason why it was opposed was, because it was plainly declaring for a war. Here it was that the prejudices began against that party in the H——se, and this laid the foundation for the great suspicions that followed afterwards. It was amazing to all those who could discover no possible means to preserve us, but by a vigorous war, to see such a great number of the representatives of the freemen of England, labouring for that which of all things in the world France most desired, and would give any money for. Nor was this the voice of that party in the H——se alone, but all without doors who were of their faction, and all who had any bias to France, or the St. Germain family, were every where industrious

industrious and noisy in decrying a war, and setting forth the inconveniencies of it. But that which gave the melancholiest reflection of all, was to find that those who were thought to have the sole direction of publick affairs, were in the same sentiments. They spoke their minds freely upon that subject, as we have been told, so did their friends; and the saying of one gentleman in great station, to C<sup>o</sup>—t Vra—au, the em——r's min—er, ought to be remembered: what their sense was, the author of the three essays told us before the parliament sat; the manner of his expressing it speaks it to be published with their allowance, and those who know his conversation with them, were persuaded it was.

“ If any among us (says he) seem at present  
 “ willing to embrace peaceful councils, and  
 “ to decline entering upon immediate action;  
 “ it is not that they doubt themselves, or  
 “ dread the adverse strength, or that their  
 “ ancient enmity to France is buried in obli-  
 “ vion. They are not so apprehensive of  
 “ coping with any foreign strength, as they  
 “ are fearful they shall be compelled to enter  
 “ into fresh conflicts with the enemies of  
 “ ENGLAND, whom they had almost sub-  
 “ dued, &c. Their ears can never endure  
 “ the cries of the poor, for want of work,  
 “ &c.”\* It is a monstrous tenderness and compassion, which can endure rather to see popery and slavery display their banners in

\* *Essays upon balance of power, &c. page 80, 81, 82.*

this land, than to behold the calamities which a new war must bring upon their country. If he can see how they can be kept out without a war, he sees things in quite another light than what any honest Englishman does. One would think he thought but slightly of the calamities of a war, when he tells us, that one of the greatest things to be dreaded in it is, that it will bring those men into play again, who never gave us the least suspicion of their being in any other interest than that of their country. It is very easy to perceive what his designs are, both in running down those men, and labouring to give us a dismal idea of a war: but he and his friends tell us, that his book shews him to be plainly for a war. It was cunning in him to say something, for fear of falling under the rage of an injured nation; and it was policy to grant him a dispensation to do it, lest by being too plain in handling an odious subject, he might put it out of his power to do any service for the future. He seems sometimes to write for a war, but (which shewed his inclination) voted against it among the 161: he ought indeed, he said, to do otherwise, but Ja—k H—w smiled so pleasantly upon him, that he could not divide against him. When he speaks for a war, it is very coldly, and in other places he takes care to destroy the force of what he said. In one place he tells us, \* That “ we can reap  
“ little from a war but the perils and losses

\* *Essays upon the balance of power, &c. p. 77.*

“ with



“ with which it is like to be attended.” This  
 is but a small encouragement to it. In an-  
 other, he is afraid “ such a debt will be at  
 “ last contracted, and most of it abroad, as  
 “ in time must impoverish and sink England\*.”  
 What then must we do? “ Why, all English-  
 “ men ought seriously to consider this reflec-  
 “ tion which Macchiavel makes, that when  
 “ a prince, or commonwealth, arrives at that  
 “ height of reputation, that no neighbour,  
 “ prince, or people, dares venture to invade  
 “ him (unless compelled by indispenfable ne-  
 “ cessity) he may do what he pleases†. In  
 “ all probability, says he, the French are  
 “ now arrived to this formidable pitch of  
 “ greatness, unless the Spaniards shew more  
 “ courage than has appeared in any measures  
 “ they have taken these last hundred years.”  
 If this be so, that the power of the French is  
 grown too great to be resisted, and we have  
 no hopes but from the Spaniards taking good  
 measures, we are in a very miserable condi-  
 tion. But hold, he shews us some hopes yet.  
 “ If they can so prevail, as to make their  
 “ young prince become a good Spaniard; if  
 “ they can divide him from French councils  
 “ —if the quiet reception he is like to find  
 “ make French councils, and French supports  
 “ no longer necessary to him, those fears will  
 “ be somewhat allayed, which we now la-  
 “ bour under‡.” But are there any hopes  
 that it will be so? Yes sure, very great;

\* *Ibid.* p. 87.    † *Ibid.*    ‡ *Ibid.* p. 73, 74.

“ He gives us promising hopes of his person,  
 “ and that a martial young prince, if he be  
 “ endowed with any share of his grandfather’s  
 “ conduct and wisdom, may put Spain in a  
 “ better condition than it has lately been, to  
 “ oppose France in any attempts it may here-  
 “ after make upon the liberties of Europe.”

O wonderful contrivance to serve his masters, and persuade England to lay aside all thoughts of war! could he expect to do it by such little fetches as these, to scare a great and warlike people with his paltry representations of the power of France? or to lull a wise nation asleep with such a silly prospect of security? Yet this is one of the great machins which C—t Tal—rd, the chief Fr—ch engineer in England has made use of, not only to bomb great ministers, and every thing he has a mind to reduce to ashes, but to batter down all the strong holds and fortresses of our religion and liberties. This is he that is caressed by great men of our own court; this is he that is employed to “ teach young  
 “ gentlemen the business of the nation;” who is to tell them in print, a little before the session begins, what they are to do the next session. If this be our condition, that the weighty affairs of the kingdom must be managed by senators, who are to learn their wisdom from such a wretch as this, in charity we ought to pray for them, in the language of our Saviour, “ Forgive them, for they  
 “ know not what they do;” but for ourselves, in those which we write over the doors of  
 pest-

pest-houses, “ Lord have mercy upon us.” If he, who in times of the greatest danger, when it most nearly concerned France to try the power of her gold in England, has been highly courted by her Tal—rd, and given very great demonstrations of his zeal to gratify the ambition of that kingdom, can make himself an interest, not only to be protected in his insolencies, but to be courted likewise by a party, and besides all this, to have the honour conferred upon him, of being made the leader of the blind ; it is easy to see what in a short time must be our doom : that between the management and conduct of men of too much intrigue, and too little understanding, we must fall under the dominion of French tyranny and popery. This the Kentish gentlemen thought they had reason to fear, would be the effect of the measures taken by our parliament, before they offered their petition. To descend to the particulars of their proceedings, which brought them under the so universal censure and displeasure of the people, would be too invidious an undertaking, and raise this little discourse to a much greater bulk than I designed. My intention is only to shew, that the gentlemen had reasons to offer their petition at that time. If one or two good ones are sufficient to justify them, and they may be taken notice of without any great offence, I must desire my reader to rest satisfied with my mentioning them. Matters that are nicer, and will not so well bear touching, I leave to be handled by men  
of

of more penetration, whose fears (I will not say concern) for the public are greater perhaps than mine are. If those petitioners were really persuaded that Fr—ch gold had any influence in the management of public affairs, it was a sufficient reason for them to endeavour by such a petition, either to make the Ho—se of Com—— take other measures, or to dispose the other parts of the kingdom to follow their example. That they were of this persuasion, we have very good reasons to believe. We know what one of the five gentlemen said in a very public place, some weeks before the petition was offered, to Sir Fr—cis Ch—ld, a member of parliament, concerning the inclination of the H—se of Com—ns to serve the Fr—ch k—g. It is not probable that that gentleman would have been so bold to speak openly to a member who was entirely in the interest of that party which he suspected, words which the other called seditious, if he had not reckoned it a service he owed his country, in a very great and dangerous crisis. About the time they petitioned, this suspicion was grown so universal, that what a gentleman told Sir Ed—rd Seym—r in Hampshire, near the time the parliament rose, that “we were bought and sold,” was the voice of the people every where. This jealousy must run very high, and there must sure be very good grounds for it, when a very great lord could say, in a very august assembly, just two days after that petition was delivered, that some things that  
were

were done, shewed that there was Fr—ch money in the case. But this was not all. Those gentlemen saw, as I observed before, that not only all the leading men of that party, which bore sway in the H—se of Com—ns, but some leading men in the nation likewise used all possible endeavours to drive people from the thoughts of war. This those gentlemen, and the bulk of the people, thought the greatest service that could be done to Fr—nce, and that the certain consequence of that would be, that in a little time we must be content with what religion, what liberty, and what Trade Fr—ce would be pleased to allow us. This being their sense of things, it was a sufficient reason for them to do what they did. What a happy nation should we be, if others would imitate them in their zeal, and virtuous concern for the public! Now is the time for Englishmen to shew themselves. Things are brought to the highest crisis that every was seen in Europe. Fr—ce plainly designs the universal monarchy: it is war only that can determine, whether she shall have it or no. If she prevail, our fate is manifest we must come under the dominion of French popery and tyranny. If she miscarry, the misery and devastation which she will bring into her kingdom, will be greater than, perhaps, she may be ever able to surmount. In this case, England will not only continue in possession of her religion and liberties, but become the greatest nation in this western world. What our fate shall be, depends

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upon

upon our management now. It is plain, that without a war we are undone: so we may be with it, if those who have the management of public affairs, should happen to be in the interest of the abdicated family, or common enemy, or should be under the old prejudices against the Dutch, which were bred in the late reigns. We know what suspicions we have had, and what grounds there were for them; this makes it absolutely necessary, that the nation represent itself anew. It would be very surprizing to see the present parliament fit again, when a great party in it has given such umbrage to the nation; when they were thought (as far as it was possible for them to venture, without plainly discovering themselves, and becoming too notorious) to do all that France could desire to have done. If their conduct throughout the session was such as made it evident, that their address to the king towards the latter end, was only designed to prevent their dissolution, or secure their election if they should be dissolved; it would be as strange to see this parliament continue, as it will be to see some chosen again, if it should be dissolved. It is upon that election the fate of England depends: if care be taken to chuse persons who love our present protestant settlement, and have no manner of bias to France, or the abdicated family, nothing can prevent the ruin of France, and England's being made a great and flourishing kingdom.

# A P P E N D I X.

## A LIST OF SUCH MEMBERS

OF THIS PRESENT H— OF COM—,

AS REFUSED THE

VOLUNTARY ASSOCIATION IN 1695.

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J—n M—nft—n,	J—es B——ty,
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J—n Tr——m,	Sir J—n Tr——an,
Fr——s Gw——n,	H—ry H——mes,
Anth—y H——nd,	Sir J—n L—fon G—re,
Sir E——d S——ur,	Sir H—ry G——gh,
J—n Gr——il,	J—n L—knor,
Th—s Str——ys,	W—m Br—ley,
Th—s Fr—ke, of Dorf.	Fr—s Gr—il,
R——d F——nds,	Sir Ch—r M——ve,
J—n H—w,	R—rt B——rty,
R——d H—w,	W—m H—vey,
Th—s Br——ton,	H—ry P——nil,
P—r Sh——ly,	S—ll Sw—ft,
Sir J—n B——lles,	R—rt B——ley,
G—rt D——en,	Sir J——ry J——rys,
Sir R—rt J——fon,	Sir J——n C——ay.
H—ry F——nch,	

NAMES

# APPENDIX.

## NAMES OF THE PERSONS

### COMMITTED BY THE HOUSE OF COMMONS THIS SESSION.

To the Tower,	{ JOHN Parkhurst, Esq; John Paschal, Esq; William Cotesworth, Esq; Samuel Shepherd, Esq;	
To the Gate- house,	{ Mr. William Colepeper, Mr. Thomas Colepeper, Mr. David Polhill, Mr. Justinian Champneyes, Mr. William Hamilton.	{ These were first taken into cus- tody of the Ser- jeant at Arms, and after sent to the Gate- house.
To Newgate,	{ Mr. Laurence, Mr. Glover.	
Taken into the Custody of the Serjeant at Arms,	{ Mr. Edward Martyn, Mr. John Dunmal, Mr. Clayton, Mr. Perks, Mr. Story, Mr. Jeffreys, Mr. Bourman, Mr. Mason, Mr. John Newark, Mr. Marsh, Mr. Branby, Charlwood Lawton, Esq; Mr. Alexander Cutting, Mr. William Adye, Mr. Edw. Allen, Mr. Julius Samborne, Mr. Joseph Wimbleton, Mr. Warham, Mr. John Haysham, Mr. William Clifton, Mr. Edw. Whitacre, Mr. John Whittrough, Mr. James Buckley, jun. Charles Mason, Esq; Mr. James Buckley, sen. Thomas Terry.	



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